

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK
- against -
HARVEY WEINSTEIN,
Defendant.

ORAL ARGUMENT REQUESTED

ORDER TO SHOW CAUSE

Ind. No. 2335/18

Upon the annexed affirmation of Robert D. Balin dated April 22, 2019, and the exhibits attached thereto, and the accompanying memorandum of law filed on behalf of non-parties The New York Times Company, The New Yorker, NYP Holdings, Inc. (publisher of the *New York Post*), Daily News, LP (publisher of the New York *Daily News*), The New Yorker, Reuters America LLC, The Associated Press, NBC News and WNBC (divisions of NBC Universal LLC), American Broadcast Company, Inc., CBS Broadcasting, Inc., Fox News Network LLC, Cable News Network, Inc., Newsday LLC, Dow Jones & Company, Inc. (publisher of the *Wall Street Journal*), Advance Publications, Inc. and the Reporters Committee for Freedom of the Press (the “Press Organizations”), and good cause having been shown, it is hereby:

ORDERED that the People of the State of New York and defendant Harvey Weinstein (the “Parties”) show cause before Justice James M. Burke, at the Criminal Term, Part 99, of the Supreme Court of the State of New York, County of New York, at the Courthouse located at 100 Centre Street, Room 1530, New York, New York, on the ____ day of April, 2019 at ____ o’clock ____m. of that day, or as soon thereafter as counsel may be heard, why an ORDER should not be made (a) denying the Parties’ applications to close the *Molineux/Sandoval* hearing, currently scheduled for 9:30 a.m. on April 26, 2019, to the public and press, (b) denying the Parties’

applications to seal all documents filed in connection with said *Molineux/Sandoval* hearing (the “Submissions”) and (c) ordering the immediate release of any Submissions currently under seal.

IT IS FURTHER ORDERED, that the Hearing, currently scheduled for 9:30 a.m. on April 26, 2019, be adjourned until the ____ day of _____, 2019 at ____ o’clock __.m. of that day, so that the Press Organizations’ motion by order to show cause can be heard and decided in advance of the Hearing date.

IT IS FURTHER ORDERED, sufficient reason appearing therefore, that service by overnight mail or electronic mail of a copy of this Order, together with the papers upon which it was granted, upon counsel for the Parties on or before April __, 2019, be deemed sufficient and proper service.

So Ordered,

_____, J.S.C.

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COUNTY OF NEW YORK

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- against -
HARVEY WEINSTEIN,
Defendant.

Ind. No. 2335/18

ORAL ARGUMENT REQUESTED

MEMORANDUM OF LAW IN SUPPORT OF PRESS ORGANIZATIONS' MOTION
(A) OPPOSING CLOSURE OF MOLINEUX/SANDOVAL HEARING,
(B) REQUESTING UNSEALING OF MOTION PAPERS, AND
(C) REQUESTING EXPEDITED HEARING

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Non-parties The New York Times Company, The New Yorker, NYP Holdings, Inc. (publisher of the *New York Post*), Daily News, LP (publisher of the New York *Daily News*), Reuters America LLC, The Associated Press, NBC News and WNBC (divisions of NBC Universal, LLC), ABC, Inc., CBS Broadcasting, Inc., Fox News Network LLC, Cable News Network, Inc., Newsday LLC, Dow Jones & Company, Inc. (publisher of the *Wall Street Journal*), Advance Publications, Inc. and the Reporters Committee for Freedom of the Press (collectively, the “Press Organizations”) respectfully submit this memorandum of law in opposition to the applications of the New York County District Attorney’s Office (the “District Attorney”) and defendant Harvey Weinstein (“Weinstein”) to close the upcoming *Molineux/Sandoval* hearing (the “Hearing”) to the public and press. The Press Organizations also respectfully request that the conditionally sealed motion papers submitted by the District Attorney and Weinstein (collectively, the “Parties”) in connection with the *Molineux/Sandoval* Hearing, as well as any motions or correspondence requesting conditional sealing and any order granting such conditional sealing, be promptly unsealed. The Press Organizations further request that, going forward, all motions, related correspondence and orders – even if sealed – be listed on the public docket for this case so that the public and press receive prompt notice that such materials exist. Last, the Press Organizations request that this Court expeditiously hear and determine the questions of court closure and sealing at least two days before the Hearing so that, in the event either the Parties or the Press Organizations disagree with the Court’s ruling, they may seek appropriate appellate relief before the Hearing date. Alternatively, if the Court would like to hear argument on the Press Organizations’ motion on April 22, 2019, the Press Organizations respectfully request that the Hearing be adjourned so that court closure and sealing applications can be heard and decided sufficiently in advance of the Hearing date.

PRELIMINARY STATEMENT

New York Courts should be “reluctant to allow the sealing of court records” or closure of courtrooms “even where both sides to the litigation have asked for” such relief. *Gryphon Dom. VI, LLC v. APP Int'l Fin. Co., B.V.*, 28 A.D.3d 322, 324, 814 N.Y.S.2d 110, 112 (1st Dep’t 2006). Given the strong First Amendment presumption that judicial proceedings be open to the public and the press, the sealing of court filings and closure of hearings is constitutionally prohibited unless the petitioner can demonstrate that the most compelling circumstances require access to be restricted. Here, the Parties argue that the Hearing should take place entirely in secret, and their *Molineux/Sandoval* papers should remain under seal, to safeguard against publicly revealing “evidence of uncharged crimes and bad acts purportedly committed by” Weinstein. *See* Exhibit F, G and H to the Affirmation of Robert D. Balin, dated April 22, 2019 (“Balin Aff.”). But the Parties have not met their heavy burden of demonstrating that these restrictions must be imposed in order to safeguard Weinstein’s right to a fair trial. Nor can the Parties establish that the proposed restrictions would be effective in protecting those interests, which independently disqualifies their request for secrecy.

The fatal flaw in the Parties’ argument is that the information the Parties seek to keep secret – *i.e.*, the identities and allegations of the women who have accused Weinstein of “uncharged crimes and bad acts” – has already been widely reported in the press. Indeed, the claims of more than 80 women who have accused Weinstein of sexual misconduct have been heavily publicized. Clearly, there is no rational basis – let alone “compelling circumstances” – that could justify the Parties’ effort to suppress this information now that it is in the public domain as a result of intensive news reporting. Moreover, even if some of the evidence filed as part of the *Molineux/Sandoval* motions relates to some bad acts that are not yet public, there is

still no valid justification for undertaking the extreme remedy of closing the courtroom for the entire Hearing and permitting wholesale sealing of the Parties' motion papers. Rather, the correct procedure is to hold as much of the Hearing as possible in open court and to unseal the Parties' filings with the minimum redactions necessary.

Before reaching the substance of the Parties' applications for closure and sealing, however, it is necessary to address a procedural matter: the Press Organizations respectfully request to be heard as soon and as far in advance of the Hearing as possible because their rights are damaged every day this issue is not resolved. Specifically, the Press Organizations request immediate access to the Parties' sealed filings because, as the Supreme Court has held, “[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976). In addition, the Press Organizations request prompt action so that there is time to appeal (or otherwise challenge) any adverse ruling restricting access to the Hearing before the Hearing actually takes place.

FACTUAL STATEMENT

A. The Highly-Publicized Sexual Assault Allegations Against Weinstein

In October 7, 2017, *The New York Times* published an article by Jodi Kantor and Megan Twohey, entitled *Harvey Weinstein Paid Off Sexual Harassment Accusers for Decades*, which revealed that Weinstein had secretly reached “at least eight settlements” with women who accused him of sexual misconduct. Balin Aff. Ex. A (the “*NYT Article*”). Five days later, *The New Yorker* published an article by Ronan Farrow, entitled *From Aggressive Overtures to Sexual Assault: Harvey Weinstein’s Accusers Tell their Stories*, in which thirteen women made on-the-record statements accusing Weinstein of highly inappropriate behavior ranging from sexual harassment to rape. *Id.* Ex. B (the “*New Yorker Article*”). Twohey, Kantor and Farrow were

awarded the 2018 Pulitzer Prize for Public Service Reporting for their reporting on Weinstein.

Id. Ex. C. A common thread running through much of the reporting on Weinstein's alleged sexual assaults is his "campaign to track and silence his accusers." See Ronan Farrow, *Harvey Weinstein's Army of Spies*, N.Y. TIMES (Nov. 6, 2017), available at <https://www.nytimes.com/2018/05/30/nyregion/weinstein-indicted-rape.html>. Moreover, the reporting in the *NYT* and *New Yorker* Articles – including claims that Weinstein's alleged abuse of women had previously "been an open secret to many in Hollywood and beyond" – was a catalyst for the global #MeToo movement. *Id.* Ex. B, 1.

The *NYT* and *New Yorker* Articles precipitated widespread reporting of the stories told by other women who have publicly accused Weinstein of sexual abuse; more than 80 women have come forward to date – including many famous actresses – and a partial list of their public allegations is as follows:

- Alicia Evans – sexual harassment¹
- Ambra Guiterrez – sexual assault²
- Angelina Jolie – sexual harassment³
- Annabella Sciorra – rape⁴
- Ashley Judd – sexual harassment⁵
- Ashley Matthau – sexual assault⁶
- Asia Argento – rape⁷
- Brit Marling – sexual harassment⁸
- Caitlin Dulany – sexual harassment⁹
- Carla Delevingne – sexual harassment, attempted sexual assault¹⁰
- Claire Forlani – sexual harassment, attempted sexual assault¹¹

¹ <https://www.bbc.com/news/entertainment-arts-41580010>

² *New Yorker* article

³ <https://www.bbc.com/news/entertainment-arts-41580010>

⁴ <https://www.bbc.com/news/entertainment-arts-41594672>

⁵ <https://www.nytimes.com/2017/10/10/us/harvey-weinstein-accusations.html>

⁶ <https://www.nytimes.com/2017/10/30/us/harvey-weinstein-sexual-assault-allegations.html>

⁷ *New Yorker* Article.

⁸ <https://www.bbc.com/news/entertainment-arts-41594672>

⁹ <https://www.latimes.com/entertainment/movies/la-et-mn-jessica-barth-caitlin-dulany-weinstein-20181029-story.html>

¹⁰ <https://www.nytimes.com/2017/10/10/us/harvey-weinstein-accusations.html>

¹¹ *Id.*

- Cynthia Burr – rape¹²
- Daryl Hannah – sexual harassment, repeated attempt to forcibly enter her hotel room¹³
- Dawn Dunning – sexual harassment¹⁴
- Dominque Huett – rape¹⁵
- Emily Nestor – sexual harassment¹⁶
- Emma De Caunes – sexual harassment¹⁷
- Florence Darel – sexual harassment¹⁸
- Gwyneth Paltrow – sexual harassment¹⁹
- Heather Graham – sexual harassment²⁰
- Hope Exiner d'Amore – rape²¹
- Jessica Barth – sexual harassment²²
- Judith Godrèche – sexual harassment, attempted sexual assault
- Kadian Noble – sexual assault
- Kate Beckinsale – sexual harassment
- Katherine Kendall –attempted sexual assault
- Lacey Dorn – sexual assault²³
- Laura Madden – sexual harassment²⁴
- Lauren Holly – sexual harassment, indecent exposure²⁵
- Lauren Sivan –attempted sexual assault, indecent exposure²⁶
- Leá Seydoux – attempted sexual assault²⁷
- Lena Headey – sexual harassment²⁸
- Lisa Rose – sexual harassment²⁹
- Liza Campbell – sexual harassment³⁰
- Louise Godbold – sexual harassment³¹
- Louisette Geiss – sexual harassment³²

¹² <https://www.nytimes.com/2017/10/30/us/harvey-weinstein-sexual-assault-allegations.html>

¹³ <https://www.bbc.com/news/entertainment-arts-41594672>

¹⁴ <https://www.nytimes.com/2017/10/10/us/harvey-weinstein-accusations.html>

¹⁵ <https://www.nytimes.com/2017/10/30/us/harvey-weinstein-sexual-assault-allegations.html>

¹⁶ *New Yorker Article*

¹⁷ <https://www.nytimes.com/2017/10/10/us/harvey-weinstein-accusations.html>

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ <https://www.nytimes.com/2017/10/30/us/harvey-weinstein-sexual-assault-allegations.html>

²² <https://www.nytimes.com/2017/10/10/us/harvey-weinstein-accusations.html>

²³ <https://www.nytimes.com/2017/10/30/us/harvey-weinstein-sexual-assault-allegations.html>

²⁴ <https://www.nytimes.com/2017/10/10/us/harvey-weinstein-accusations.html>

²⁵ <https://www.bbc.com/news/entertainment-arts-41580010>

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ <https://www.bbc.com/news/entertainment-arts-41594672>

³⁰ <https://www.nytimes.com/2017/10/10/us/harvey-weinstein-accusations.html>

³¹ *Id.*

³² *Id.*

- Lucia (Stoller) Evans – rape³³
- Lupita Nyong’o – sexual harassment³⁴
- Lysette Anthony – rape³⁵
- Mira Sorvino – sexual harassment³⁶
- Natassia Malthe – rape³⁷
- Paz de la Huerta – rape³⁸
- Romola Garai – sexual harassment³⁹
- Rosanna Arquette – sexual harassment⁴⁰
- Rose McGowan – rape⁴¹
- Salma Hayek – sexual harassment⁴²
- Sophie Dix – attempted sexual assault, indecent exposure⁴³
- Tomi-Ann Roberts – sexual harassment, indecent exposure⁴⁴
- Uma Thurman – sexual harassment, attempted sexual assault⁴⁵
- Zelda Perkins – sexual harassment, attempted sexual assault⁴⁶
- Zoe Brock – sexual assault⁴⁷

See Balin Aff. ¶ 6. In her bestselling memoir, *Brave*, Rose McGowan recounted her experience of being raped by Weinstein in graphic detail. *See* Rose McGowan, *Brave* (HarperOne, 2018).

Other alleged victims filed a class action against Weinstein in federal court, alleging multiple rapes and other bad acts in their 264 page publicly-filed amended complaint, and the presiding judge recently allowed their sex trafficking claim to go forward. *See* Geiss v. Weinstein Co. Holdings LLC, 17 Civ. 9554, Dkt. 140 (AKH) (S.D.N.Y.). The actress Wedil David has also filed a civil lawsuit accusing Weinstein of rape. *See* David v. The Weinstein Company LLC, 18 Civ. 03725 (RA) (S.D.N.Y.).

³³ New Yorker Article

³⁴ <https://www.bbc.com/news/entertainment-arts-41580010>

³⁵ <https://www.bbc.com/news/entertainment-arts-41594672>

³⁶ New Yorker Article.

³⁷ <https://www.bbc.com/news/entertainment-arts-41594672>

³⁸ *Id.*

³⁹ <https://www.nytimes.com/2017/10/10/us/harvey-weinstein-accusations.html>

⁴⁰ *Id.*

⁴¹ <https://www.bbc.com/news/entertainment-arts-41594672>

⁴² <https://www.bbc.com/news/entertainment-arts-41580010>

⁴³ <https://www.nytimes.com/2017/10/10/us/harvey-weinstein-accusations.html>

⁴⁴ <https://www.bbc.com/news/entertainment-arts-41580010>

⁴⁵ <https://www.bbc.com/news/entertainment-arts-41594672>

⁴⁶ *Id.*

⁴⁷ <https://www.bbc.com/news/entertainment-arts-41580010>

The allegations against Weinstein have not only been broadcast in the press. Through social media and other platforms, famous actresses and Hollywood figures, including McGowan, Ashley Judd, Angelina Jolie, Gwyneth Paltrow and Asia Argento have directly accused Weinstein of sexual misconduct. *See* Jim Rutenberg, Rachel Abrams and Melena Ryzik, *Harvey Weinstein's Fall Opens the Floodgates in Hollywood*, N.Y. TIMES (Oct. 16, 2017), available at [https://www.nytimes.com/2017/10/16/business/media/harvey-weinsteins-fall-opens-the-floodgates-in-hollywood.html? module=inline](https://www.nytimes.com/2017/10/16/business/media/harvey-weinsteins-fall-opens-the-floodgates-in-hollywood.html?module=inline). These accusations fueled the #MeToo movement, which grew organically out of activism on social media (particularly Twitter) and which has provided women with an effective vehicle for informing the public of sexual misconduct by powerful men. *Id.* Because of the prominence of the #MeToo hashtag, women who are not celebrities have also disseminated their own allegations of Weinstein's sexual misconduct to a large audience. *Id.* Due to the sheer volume of highly-publicized accusations against Weinstein and his prominence as a focal point of the #MeToo movement, many specific allegations of sexual misconduct by Weinstein are well known. *Id.*

The news reporting on the Weinstein case has also led to public scrutiny of the District Attorney's handling of the allegations of sexual assault against him. The *NYT* and *New Yorker* Articles both called into question the District Attorney's 2015 decision not to press charges against Weinstein after Ambra Gutierrez told police he had groped her. *Id.* Exs. A, B. Investigators instructed Gutierrez to set up a meeting with Weinstein the day after she filed her initial report and to record their conversation, which she did. *Id.* Ex. B, 11-14. On that recording, Weinstein reportedly admitted to groping Gutierrez' breasts and "presse[d] her to join him in his hotel room while he shower[ed]." *Id.* At least one police source told *The New Yorker* that "the department had collected more than enough evidence to prosecute Weinstein." *Id.* But,

“[a]fter two weeks of investigation, the D.A.’s office decided not to file charges.” *Id.* The revelation that the District Attorney had initially declined to prosecute Weinstein – even after receiving credible evidence of sexual abuse – prompted serious public debate about the “office’s failures to prosecute the affluent and powerful.” *Id.* Ex. A, B.

B. Weinstein’s Indictment and Pre-Trial Proceedings

On May 31, 2018, a grand jury indicted Weinstein on two rape charges and one charge of committing a criminal sexual act, which were based on allegations that Weinstein attacked two women in 2004 and 2013, respectively. *Id.* ¶ 7. On July 2, 2018, Weinstein was indicted on one additional count of committing a criminal sexual act and two more counts of predatory sexual assault relating to the abuse of a third woman in 2006. *Id.* Weinstein has pled not guilty to all counts. *Id.* On October 11, 2018, this Court dismissed the single charge based on the 2004 incident. *Id.*⁴⁸ Weinstein’s application to dismiss the remaining five counts of sexual misconduct and rape was denied on December 20, 2018. *Id.* ¶ 9. Trial is currently scheduled to begin on June 3, 2019. *Id.*

The indictment of Weinstein and subsequent pre-trial proceedings have been the subject of widespread reporting and intense public interest. *See, e.g.,* James C. McKinley Jr., *Harvey Weinstein Indicted on Rape and Criminal Sexual Act Charges*, N.Y. TIMES (May 30, 2018), available at <https://www.nytimes.com/2018/05/30/nyregion/weinstein-indicted-rape.html>.

C. The Molineux/Sandoval Hearing

On April 17, 2019, this Court issued a Decision and Order (the “Order”) stating that the Parties have filed “motions … regarding Molineux/Sandoval evidence” and that the Court “will

⁴⁸ On October 12, 2018, attorneys for American Broadcast Company, Inc. (“ABC”) filed a letter with this Court requesting the unsealing of Weinstein’s motion to dismiss the charges against him and related filings after the Parties represented that those documents were filed under seal. *Id.* ¶ 8, Ex. E. The Court declined to rule on ABC’s application. *Id.*

be conducting a *Molineux/Sandoval* hearing regarding the admissibility of [that] evidence” on April 26, 2019. *Id.* Ex. F, 1. The Order also states that “[o]n application of both sides, the Court has conditionally sealed the submissions of the defendant and the People” in connection with the *Molineux* and *Sandoval* motions (the “Submissions”). *Id.* The date on which the Parties filed their Submissions, the length of time these filings have remained conditionally sealed, and the grounds for conditional sealing are not publicly known. As of April 5, 2019, there was no order by the Court conditionally sealing the Submissions in the public case file. *Id.* ¶ 10.⁴⁹ It bears mentioning that, while rumors have circulated for several months that motions were being filed under seal in this case, the public docket does not reflect the existence of any such sealed motions, and the court clerk insisted as recently as two weeks ago that there were not sealed motions in this proceeding. *Id.*

Although the content of the Parties’ Submissions is unknown to the public because the Court has sealed them *in toto*, the Order indicates in general terms that “[i]n their *Molineux* application, the People seek to introduce evidence of uncharged crimes and bad acts purportedly committed by the defendant on their direct case. In their *Sandoval* application, should the defendant testify, the People seek to use bad acts and uncharged crimes purportedly committed by the defendant, submitting that this evidence bears on the defendant’s credibility.” *Id.* Ex. F, 2. The Order also states that the “defendant opposes the People’s *Molineux* and *Sandoval* applications and specifically opposes the introduction or use of uncharged crimes and bad acts for any purpose.” *Id.*

On April 11, 2019, the Court sent the Parties a “communication … seeking the position of the [P]arties on closure of the courtroom during the *Sandoval* and *Molineux* hearings to be

⁴⁹ If the court issued a written or transcribed order directing conditional sealing, the Press Organizations respectfully request that it be made available to the public, along with the Parties’ applications for conditional sealing.

conducted on April 26, 2019.” *Id.* Ex. F, 1.⁵⁰ On April 16, 2019, the Parties both filed written applications to close the courtroom, which are attached to the Order. *Id.* Exs. G, H. In its request to close the Hearing, the District Attorney recognizes that judicial proceedings such as the *Molineux/Sandoval* Hearing are “presumptively open to the public and press,” but argues that the Hearing should nevertheless be closed because “the publication of the evidence ‘would serve no purpose other than to arouse public sentiment toward the defendant and would have a devastating effect on defendant’s ability to select an impartial jury.’” *Id.* Ex. G, 2 (quoting *People v. Arthur*, 178 Misc. 2d 419, 425 (Sup. Ct. N.Y. Cty. 1998)). The District Attorney further contends that “another pertinent consideration is the privacy of those potential witnesses who have been victims of sexual assault and whose identity is protected by law.” *Id.* Echoing the District Attorney, Weinstein argues that the Hearing should be closed to avoid exposing “prospective jurors … to potentially irrelevant and unquestionably prejudicial information that will impede Mr. Weinstein’s ability to receive a fair trial, particularly in the sensationalized media environment surrounding these proceedings.” *Id.* Ex. H, 3.

For the reasons that follow, the Court should deny the Parties’ applications to hold the Hearing in secret and should promptly unseal all the papers filed in connection with the *Molineux/Sandoval* motions, including all proposed exhibits, the Parties’ sealed applications to conditionally file their papers under seal and any related applications or orders.

ARGUMENT

As the Parties both acknowledge, the right of access to court proceedings and records is protected by the First Amendment to the United States Constitution and article I, section 8 of the New York State Constitution. *See Press-Enterprise Co. v. Superior Ct.*, 478 U.S. 1 (1986)

⁵⁰ The Court’s April 11 communication to the Parties is not listed on the docket or contained in the public file and, to the extent that has been sealed, the Press Organizations respectfully request that it be made available to the public.

(“*Press-Enterprise II*”); *Globe Newspaper Co. v. Superior Ct.*, 457 U.S. 596 (1982); *Associated Press v. Bell*, 70 N.Y.2d 32, 517 N.Y.S.2d 444 (1987). The constitutional presumption in favor of access requires “the most compelling circumstances” to justify any restriction upon that right. *In re Application of Nat'l B'casting Co.*, 635 F.2d 945, 952 (2d Cir. 1980). See also *Danco Labs., Ltd. v. Chem. Works of Gedeon Richter, Ltd.*, 274 A.D.2d 1, 8, 711 N.Y.S.2d 419, 425 (1st Dep’t 2000) (“Especially when issues of major public importance are involved, the interests of the public as well as the press in access to court records ‘weigh heavily’ in favor of release”) (citation omitted).

In order to protect the right of public access to judicial proceedings, First Amendment jurisprudence prohibits the closure of court hearings or sealing of court records without on-the-record factual findings demonstrating that (1) the restriction is essential to preserve a compelling interest; (2) there is no less restrictive alternative that will protect the demonstrated compelling interest; (3) the requested restriction will be effective in protecting the specific compelling interest at issue; and (4) the order limiting public access is drawn as narrowly as possible. *Press-Enterprise II*, 478 U.S. at 1; *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110 (2d Cir. 2006); *Danco*, 274 A.D.2d 1, 711 N.Y.S.2d 419; *Doe v. New York Univ.*, 6 Misc. 3d 866, 866, 786 N.Y.S.2d 892, 892 (Sup. Ct. N.Y. Cty. 2004). A criminal defendant who “asserts that his right to a fair trial may be compromised by an open proceeding bears the burden of supporting that conclusion” and must “demonstrat[e] that first, there is a substantial probability that [his] right to a fair trial will be prejudiced by publicity that closure would prevent and, second, reasonable alternatives to closure cannot adequately protect the defendant’s fair trial rights.” *Associated Press v. Bell*, 70 N.Y.2d at 39, 517 N.Y.S.2d at 448 (quoting *Press-Enterprise II*, 478 U.S. at 9-10).

The right of access to hearings and court filings “is also firmly grounded in common law principles.” *Danco*, 274 A.D.2d at 6, 711 N.Y.S.2d at 423 (citing *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 597 (1978)). *See also People v. Burton*, 189 A.D.2d 532, 535-36, 597 N.Y.S.2d 488, 491-92 (3d Dep’t 1993) (“a common-law presumption” favors public access to court records); *In re Application of Nat’l B’casting Co.*, 635 F.2d at 949 (“the common law right to inspect and copy judicial records is beyond dispute”) (citation omitted). Like the constitutional presumption in favor of access, the common law presumption may be overcome only by an on-the-record showing that “the public’s right of access is outweighed by competing interests. Specificity of proof and of judicial findings are required, and a trial court must also consider less drastic alternatives to sealing the records[.]” *Burton*, 189 A.D.2d at 536, 597 N.Y.S.2d at 491. Critically, where “the interest favoring nonaccess is a criminal defendant’s right to a fair trial, sealing may only be ordered upon a showing of a *reasonable likelihood* that the publicity from the disclosure of the records would render it *impossible* to obtain a fair and impartial jury.” *Id.* (second emphasis added). *See also Associated Press v. Bell*, 70 N.Y.2d at 38, 517 N.Y.S.2d at 447 (in context of suppression hearings, “hypothetical risk of prejudice or taint cannot justify categorical denial of public access” to such hearings because “the important interests of *both* the accused and the public can be accommodated” in other ways).

The Court of Appeals has specifically held that the presumption of openness applies to pre-trial hearings “to determine which, if any, of the defendant’s prior criminal acts would be admissible to impeach his credibility should he take the witness stand” (*i.e.*, *Sandoval* hearings). *Capital Newspapers Div. of Hearst Corp v. Clyne*, 56 N.Y.2d 870, 872, 453 N.Y.S.2d 396, 396-97 (1982). *See also In re Gannett Co. v. Doran*, 74 A.D.3d 1788, 1789-90, 903 N.Y.S.2d 634, 634 (4th Dep’t 2010) (“[T]he Court of Appeals has specifically recognized that the public’s First

Amendment right of access to criminal trials extends to *Sandoval* hearings and the Court of Appeals outlined the procedures that a court must follow before closing a criminal proceeding to the public.”) (internal citation omitted). The Parties also tacitly acknowledge that, under the same rationale, *Molineux* hearings are likewise presumptively open to the public. As one court noted, “[g]enerally, *Molineux* motions are litigated in open court and any written submissions, as well as the court’s ruling, become part of the court’s records.” *People v. Alvarez Hernandez*, No. 1352/00, 2002 WL 31109824, at *1 (County Ct. Westchester Cty. June 13, 2002). The public’s right of access thus encompasses all hearings and submissions upon which *Molineux* and *Sandoval* motions are decided, including briefs, declarations, attached exhibits and orders. *See, e.g., In re Application of Nat’l B’casting Co.*, 635 F.2d at 949; *Burton*, 189 A.D.2d at 535, 597 N.Y.S.2d at 491; *Danco*, 274 A.D.2d at 7, 711 N.Y.S.2d at 424; *In re Glens Falls Newspapers, Inc. v. Berke*, 206 A.D.2d 668, 668, 614 N.Y.S.2d 628, 629 (3d Dep’t 1994); *see also United States v. Tangorra*, 542 F. Supp. 2d 233, 236 (E.D.N.Y. 2008) (“[D]ocuments submitted to a court in connection with a motion are within the presumption of access.”) (citing *Lugosch*, 435 F.3d at 124).

I. THE COURT SHOULD EXPEDITIOUSLY DECIDE THE PRESS ORGANIZATIONS’ APPLICATION TO OPEN THE COURTRoom AND UNSEAL THE SUBMISSIONS

As a threshold matter, the Press Organizations request that their order to show cause opposing closure and to unseal the submissions be heard on an expedited basis and as far as possible in advance of the April 26 Hearing. As the Supreme Court has held, “[t]he loss of First Amendment freedoms for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod*, 427 U.S. at 373. “Sealing motions should be decided expeditiously because undue delays in ruling on such motions implicate the public’s right of access to court records.” *Mosallem v. Berenson*, 76 A.D.3d 345, 353, 905 N.Y.S.2d 575, 582 (1st Dep’t 2010). Even a

“minimal delay” harms “the value of openness itself, … whatever provision is made for later public disclosure.” *In re Charlotte Observer*, 882 F.2d 850, 856 (4th Cir. 1989). In other words, a court deciding a public access issue “must make its findings quickly” because of “the importance of immediate access where a right to access is found.” *Lugosch*, 435 F.3d at 126.

See also Grove Fresh Distrib. v. Everfresh Juice Co., 24 F.3d 893, 897 (7th Cir. 1994) (“The newsworthiness of a particular story is often fleeting. To delay or postpone disclosure undermines the benefit of public scrutiny and may have the same result as complete suppression.”). A prompt hearing on the Press Organizations’ order to show cause is also necessary to give them a meaningful opportunity to seek an expedited appeal from any adverse decision by this Court or initiate Article 78 proceedings *before* the Hearing takes place behind closed doors. Counsel for the Press Organizations will make themselves available for oral argument at the Court’s earliest convenience.⁵¹

⁵¹ On another point of constitutional importance, the Press Organizations respectfully submit that the Court erred by conditionally sealing the *Molineux* and *Sandoval* Submissions without first according the public and press an opportunity to be heard and without issuing a public written decision setting forth the justification for conditional sealing. The law is clear that, before ordering sealing, courts “must adhere strictly to the procedures set forth in the controlling case law including affording a full opportunity by any interested members of the press to be heard, and making specific findings to support its determination.” *Daily News L.P. v. Wiley*, 126 A.D.3d 511, 515, 6 N.Y.S.3d 19, 24 (1st Dep’t 2015). *See also Associated Press v. Owens*, 160 A.D.2d 902-03, 554 N.Y.S.2d 334, 336 (2d Dep’t 1990) (reiterating that courts “must adhere” to procedural safeguards before closing proceedings and concluding that trial court judge “utterly disregarded his obligation to give interested members of the news media the opportunity to be heard on the issue of closure”); *In re Capital Newspapers Div. of Hearst Corp. v. Moynihan*, 125 A.D.2d 34, 38, 512 N.Y.S.2d 266, 269 (3d Dep’t 1987) (“affected members of the media should be given the opportunity to be heard”), *aff’d on other grounds*, 71 N.Y.2d 263, 525 N.Y.S.2d 4 (1988). *In re Westchester Rockland Newspapers v. Leggett*, 48 N.Y.2d 430, 442, 423 N.Y.S.2d 630, 637 (1979) (“[A]ll proceedings on the [Parties’ application to close the Hearing and seal their Submissions], whether in open court or *in camera*, should be recorded for appellate review” and “the reasons for closure shall be given in open court.”). Moreover, “the presumption of access normally involves a right of *contemporaneous* access.” *In re Continental Illinois Secs. Litig.*, 732 F.2d 1302, 1310 (7th Cir. 1984). “Indeed, for the presumptive right to be suspended or nonexistent until after the judge has ruled on a motion, would be to impair the important interest in contemporaneous review by the public of judicial performance.” *In re Coordinated Pretrial Proceedings*, 101 F.R.D. 34, 43 (C.D. Cal. 1984). Here, there is no contemporaneous decision on the record explaining the rationale for conditional sealing. It is also unclear when the Parties filed the *Molineux* and *Sandoval* motions or how long the Submissions have remained sealed because the press and public were provided no notice of the conditional sealing. Going forward, the Press Organizations respectfully request prompt notice from the Court any time the Parties’ apply to file documents under seal and an entry on the public docket so that they can be heard before any sealing takes effect.

II. THE PARTIES HAVE FAILED TO OVERCOME THE STRONG PRESUMPTION THAT THE HEARING AND SUBMISSIONS SHOULD BE OPEN TO PUBLIC SCRUTINY

The Parties have failed to carry their heavy burden of showing that there is a substantial probability that Weinstein’s right to a fair trial will be prejudiced unless the Court takes the extreme step of closing the Courtroom during the entire *Molineux/Sandoval* Hearing and sealing the Parties’ Submissions in their entirety.

Weinstein asserts that “the media frenzy surrounding Mr. Weinstein is a textbook example of the ‘exceptional and compelling circumstances’ that justify the exclusion of the public and the press.” Balin Aff. Ex. H (quoting *Poughkeepsie Newspapers, Inc. v. Rosenblatt*, 92 A.D.2d 232, 234, 459 N.Y.S.2d 857, 859 (2d Dep’t 1983)), *aff’d*, 61 N.Y.2d 1005, 475 N.Y.S.2d 370 (1984). But the right of public access “cannot be overcome by the conclusory assertion that publicity might deprive the defendant of [his or her] right [to a fair trial].” *Press-Enterprise II*, 478 U.S. at 15. Indeed, the risk of negative pretrial publicity, “even if pervasive and concentrated, cannot be regarded as leading automatically and in every kind of criminal case to an unfair trial.” *Nebraska Press Ass’n v. Stuart*, 427 U.S. 539, 565 (1976). As the Supreme Court has recognized, “[p]rominence does not necessarily produce prejudice, and juror *impartiality*, we have reiterated, does not require *ignorance*.” *Skilling v. United States*, 561 U.S. 358, 381 (2010) (holding that intense negative publicity did not taint jury in the trial of disgraced Enron boss Jeffrey Skilling). The reason that extensive pretrial media coverage does not thereby render all high-profile trials presumptively unfair is the expectation “that jurors will set aside their preconceptions when they enter the courtroom and decide cases based on the evidence presented.” *Id.* at 399 n.34. And it is clear that jurors can (and do) live up to the expectation that they put aside negative pretrial publicity and focus on the evidence before them, as exemplified by the trials of George Zimmerman, Michael Jackson, Casey Anthony, O.J. Simpson, Robert

Durst and Lorena Bobbitt – all of which engendered a tremendous amount press coverage leading up to the trial, much of it critical of the defendant, and yet nevertheless ended in acquittal.

Straining to identify a more specific example of prejudice to overcome the presumption of access, both Parties essentially argue that Weinstein will be prejudiced by the revelation of “uncharged, unproven accusations” of sexual misconduct. Balin Aff. Exs. G, H. But this argument ignores the crucial fact that the public is acutely aware of the very allegations that Weinstein now seeks to suppress because of the widespread interest in the news reporting on this subject. “The nature and extent of the information already disseminated to the public is one factor to be considered by the court in deciding to close a hearing” and the proponent of sealing “must demonstrate the impact this information will have on the jury pool.” *Leggett*, 48 N.Y. 2d at 447, 423 N.Y.S.2d at 641 (Cooke, C.J., concurring). Moreover, in order to overcome the presumption of public access, the parties seeking to close the proceedings must make a showing from which the court can make specific findings that there is “‘a strong likelihood’ that fair trial rights would be prejudiced if the proceedings remained open.” *Capital Newspapers Div. of Hearst Corp.*, 71 N.Y.2d at 272, 525 N.Y.S.2d at 29.

Far from demonstrating a strong likelihood that Weinstein’s ability to receive a fair trial will actually be prejudiced by the dissemination of “evidence of bad acts and uncharged crimes,” the Parties have made no effort to explain how the disclosure of this information could possibly alter the opinions of potential jurors. The jury pool has *already* been exposed to highly-publicized allegations in the press and on social media from more than eighty women – including world-famous actresses – accusing Weinstein of committing a wide range of sexual misconduct, ranging from indelicate propositions to brutal rapes. Simply put, Weinstein is the focal point of

the #Me Too movement and the alleged “bad acts and uncharged crimes” at issue here have been indelibly burned into the public consciousness already. As such, the Parties are unable to demonstrate (as they must) that there is a substantial probability that the repetition of this widely-known information in open court will have a meaningful effect on the opinions of potential jurors or otherwise prejudice Weinstein’s right to a fair trial. *See N.Y. Times Co. v. Demakos*, 137 A.D.2d 247, 253, 529 N.Y.S.2d 97, 101 (2d Dep’t 1988) (refusing to close pretrial proceedings in the wake of intense news reporting because the disclosure of information in court could not possibly have a “greater” prejudicial effect than the earlier “pretrial publicity”); *Wash. Post v. Robinson*, 935 F.2d 282, 292 (D.C. Cir. 1991) (declining to restrict access because there was not a substantial likelihood that additional “disclosure could pose any extra threat” to defendant’s fair trial rights); *In re Charlotte Observer*, 882 F.2d at 854 (describing as “highly dubious” lower court’s finding that republication of public information would prejudice defendant).

Moreover, the obvious futility of trying to suppress information that is already in the public domain independently dooms the Parties’ efforts to close the Hearing and seal the Submissions. Where, as here, restricting access to judicial proceedings cannot effectively prevent the purported harm, “that alone suffices to make it constitutionally impermissible.” *In re Charlotte Observer*, 882 F.2d at 855. Or as Justice Blackmun put it, “[w]here significantly prejudicial information already has been made public, there might well be little justification” for sealing pretrial filings in a criminal case. *Gannett Co. v. DePasquale*, 443 U.S. 368, 442 (1979) (Blackmun, J., concurring in part and dissenting in part). Because the Submissions in this case remain sealed, it is impossible for the Press Organizations to know exactly what “uncharged, unproven accusations” against Weinstein are at issue. But given the vast number of women who

have publicly accused Weinstein of serious sexual misconduct, it is highly likely that most (if not all) of these accusations have already been disclosed to the public. The fact that neither Party claims that the evidence at issue remains unknown to the public tends to confirm that it is all public knowledge already. In any event, it is fair to assume that the District Attorney will seek to use evidence of the investigation into Ambra Gutierrez' official complaint – which has already been the subject of extensive news-reporting – and other high-profile allegations as part of its case. There is simply no good reason to allow the Parties to suppress “uncharged, unproven accusations” that are already a matter of public record and their request to restrict access to pretrial proceedings must be denied for this reason.⁵²

The cases cited by the Parties are readily distinguishable because those cases all involved secret and undisclosed information about the defendant, in stark contrast to this case involving previously published and widely known information. For instance, in *People v. Arthur*, the information at issue “derive[d] from sources which are by law confidential and not subject to public scrutiny.” *People v. Arthur*, 178 Misc. 2d 419, 424, 682 N.Y.S.2d 811, 815 (Sup. Ct. N.Y. Cty. 1998). Similarly, in *People v. Arroyo*, the court justified its provisional order sealing *Sandoval* evidence on the basis that the “Division of Criminal Justice Services criminal history

⁵² The District Attorney’s related argument that closing the Hearing and sealing the Submissions is also necessary to protect “the privacy of those potential witnesses who have been victims of sexual assault” must also be rejected. As a threshold matter, the fact that Weinstein’s case involves allegations of sexual abuse does not justify indiscriminate closure of the courtroom during the Hearing. See *Leggett*, 48 N.Y.2d at 441, 423 N.Y.S.2d at 637 (“[T]he fact that the defendant may be charged with sexual offenses does not mean that the hearing should automatically be closed to the public.”). The Press Organizations are cognizant of the statutory protection accorded to victims of sexual assault by N.Y. Civil Rights Law § 50-b(1), but note that the statute allows the Court to release the names of victims “for good cause.” N.Y. Civ. Rights Law § 50-b(2). Good cause exists here because it is highly likely that many (if not all) of Weinstein’s alleged victims that the District Attorney seeks to call as witnesses have already publicly discussed their claims in the media. In such cases where the victims’ identities and allegations are already publicly known, there is no good reason to keep their identities secret. The fact that the District Attorney seeks to put these “witnesses” on the stand to “testify” at trial in open court further undermines the District Attorney’s argument that these women’s identities must remain secret. And if there are in fact any anonymous victims, a less restrictive alternative would be to simply redact the names of those individuals from the Submissions and refer to them by pseudonyms during the Hearing.

records are not public information.” 177 Misc. 2d 106, 112, 675 N.Y.S.2d 272, 276 (Sup. Ct. Schoharie Cty. 1998). And the *Teresi* case cited by Weinstein also involved “confidential material,” apparently from non-public police records, about “three prior on-duty shooting incidents involving three of the [police] defendants” accused of murdering the unarmed immigrant Amadou Diallo in a stairwell. *See also Daily News L.P. v. Teresi*, 265 A.D.2d 129, 131-32, 706 N.Y.S.2d 527, 529-30 (3d Dep’t 2000). The obvious difference between those cases and this one is that the information at issue here is indisputably “public information” that has been “subject to public scrutiny” for a year and a half as part of one of the most significant news stories in recent history. In a similar case, a court declined to limit public access to a *Molineux* application and specifically distinguished *Arthur* on the ground that the information at issue was *not* derived from “sources which are confidential in nature or which have been sealed by statute.” *Alvarez Hernandez*, 2002 WL 31109824, at *2. In other words, courts do not permit courtroom closure or sealing to suppress information that is already public. Given the intensely public nature of the information at issue in this case, the rationale for secrecy underpinning the Parties’ cases simply does not apply.

Next, the Parties both argue that an open Hearing and disclosure of the Submissions “would serve *no purpose* other than to arouse negative public sentiment toward the defendant” (Balin Aff. Ex. F, 2) (emphasis added), but this assertion is flatly incorrect. The sexual abuse allegations against Weinstein are unquestionably the subject of legitimate public interest, particularly because he was able to keep those allegations secret for so long. The Court of Appeals has also admonished courts that “it cannot be said as a matter of law that there is no genuine public interest” in a *Sandoval* hearing, “in view both of the significance of the rulings to be made and their impact on the decision of the defendant whether to take the witness stand.”

Clyne, 56 N.Y.2d at 873, 453 N.Y.S.2d at 397. Similarly, the Supreme Court has repeatedly stressed “the importance of public access to a preliminary hearing” as a vital means of providing oversight to judicial proceedings. *Press Enterprise II*, 478 U.S. at 13. See also *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 572 (1980) (“People in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing.”). Accordingly, courts have consistently recognized that “the need for an open proceeding may be particularly strong for suppression hearings” because they “frequently challenge[] acts of the police and prosecutor … giving particular value and significance to conducting such hearings in the public eye.” *Associated Press v. Bell*, 70 N.Y.2d at 38, 517 N.Y.S.2d at 447 (internal citation omitted). See also *Leggett*, 48 N.Y.2d at 437, 423 N.Y.S.2d at 634 (“Justice must not only be done; it must be perceived as being done.”).

The District Attorney argues that public oversight “considerations are not present when deciding whether closure is proper in a *Sandoval* or *Molineux* hearing.” Balin Aff. Ex. F, 3 n.3. But this argument ignores the fact that there is a legitimate public interest in the “*uncharged* crimes and bad acts purportedly committed by the Defendant” (Balin Aff. Ex. F, 2) in light of the controversy over the District Attorney’s failure to indict Weinstein for the alleged sexual assault of Ambra Gutierrez. The public has a strong interest in knowing whether there may be other occasions where the District Attorney had credible allegations of abuse against Weinstein but declined to prosecute. If the Court closes the Hearing and seals the Submissions permanently and then declines to grant the District Attorney’s *Molineux/Sandoval* motions, this information may *never* come to light and that will in turn raise further suspicions over the District Attorney’s handling of sexual assault claims involving powerful men like Weinstein – which is precisely the harm the presumption of openness is designed to guard against. See *Press-Enterprise Co. v.*

Superior Ct., 464 U.S. 501, 508 (1984) (“Openness [] enhances both the basic fairness of [a] trial and the appearance of fairness so essential to public confidence in the system.”) (citing *Richmond Newspapers*, 448 U.S. 569-71).

In arguing that the an open Hearing and unsealed Submissions would serve “no purpose” other than engendering negative coverage of Weinstein in the press, the Parties have also ignored the compelling interests of Weinstein’s alleged victims, who deserve to have their accusations heard in open court and on the public record. It has been widely reported that Weinstein waged a “campaign to track and silence his accusers” and, after many years of being silenced, these women exhibited tremendous courage to accuse such a powerful man and to relive, for some of them, the most horrific moment of their lives. *See Ronan Farrow, Harvey Weinstein’s Army of Spies*, N.Y. TIMES (Nov. 6, 2017), available at <https://www.nytimes.com/2018/05/30/nyregion/weinstein-indicted-rape.html>. As the Court of Appeals has recognized, the presumption of open access to court proceedings is designed to protect the interests of “the victims of crime who suffer when the law is not enforced with vigor and impartiality.” *Leggett*, 48 N.Y.2d at 438. Simply put, it would be unjust to suppress the voices of Weinstein’s accusers – who are prepared to testify against Weinstein in open court – precisely because they want and deserve their accusations to be heard in public.⁵³

Last, the Parties have failed to establish (as they must) that there are no effective alternatives to their proposal to close the Hearing and seal the Submissions or that those sweeping restrictions on access are narrowly tailored – yet more independent grounds that mandate denial of their applications. On the first issue, the Supreme Court and lower courts have

⁵³ Of course, to the extent that any of Weinstein’s accusers are anonymous – and wish to remain so – the Press Organizations understand that their identities might properly be subject to redactions in the Submissions and these women could be referred to pseudonymously at the Hearing, if the Court finds sufficient grounds for such relief.

repeatedly rejected arguments to close preliminary hearings in criminal cases since screening jurors at a future *voir dire* ordinarily offers an adequate alternative. *See Press-Enterprise, II*, 478 U.S. at 15. As courts have emphasized, “[v]oir dire is of course the preferred safeguard” against the threat of negative pretrial publicity. *In re Charlotte Observer*, 882 F.2d at 855.⁵⁴ A finding that *voir dire* is an effective alternative to court closure is particularly compelling here in New York City, where there is a vast jury pool. *See Skilling*, 561 U.S. at 382 (“At the time of Skilling’s trial, more than 4.5 million individuals eligible for jury duty resided in the Houston area Given this large, diverse pool of potential jurors, the suggestion that 12 impartial individuals could not be empaneled is hard to sustain.”). So too, the Parties’ proposal to close the courtroom for the duration of the Hearing and seal the Submissions *in toto* – the most stringent restrictions imaginable – is, by any definition, not narrowly tailored. *See, e.g., People v. Ramos*, 90 N.Y.2d 490, 662 N.Y.S.2d 739 (1997) (alternatives to restricting access must be considered to ensure that closure is narrowly tailored).

In sum, the Parties are simply unable to make the stringent showing necessary to justify the extreme remedies of holding the Hearing in secret and keeping their Submissions under seal in perpetuity. Therefore, the Hearing should be open to the public and press and the Submissions should be promptly unsealed.

⁵⁴ *See also Associated Press v. Bell*, 70 N.Y.2d at 38, 517 N.Y.S.2d at 447 (1987) (“In individual cases, through careful voir dire a court can identify any potential jurors whose prior knowledge of the case would deter them from rendering an impartial verdict, and thus protect the right of the accused to a fair trial”); *In re Application of Nat'l B'casting Co.*, 635 F.2d at 953 (“The opportunity for *voir dire* examination still remains a sufficient device to eliminate from jury service those so affected by exposure to pre-trial publicity that they cannot fairly decide issues of guilt or innocence.”); *United States v. Yousef*, No. S12-93-CR-180, 1997 WL 411596, at *3 (S.D.N.Y. July 18, 1997) (finding in the World Trade Center bombing case that “a thorough voir dire of potential jurors will be sufficient in detecting and eliminating any prospective jurors prejudiced by pretrial publicity”); *Seattle v. U.S. Dist. Ct.*, 845 F.2d 1513 (9th Cir. 1988) (finding that the district court erred by “dismiss[ing] the likelihood that an impartial jury could be impaneled through searching voir dire and the use of preemptory challenges”).

III. THE COURT MUST NOT CLOSE THE COURTROOM DURING THE ENTIRE HEARING OR SEAL THE SUBMISSIONS IN THEIR ENTIRETY WHEN LESS RESTRICTIVE REMEDIES ARE AVAILABLE

The Press Organizations are at a disadvantage because so much of the record in this case remains under seal. Therefore, it is impossible for the Press Organizations to determine with absolute certainty that the Parties' *Molineux* and *Sandoval* Submissions do not contain some information that might be legitimately subject to sealing. But even if some small fraction of the record must be redacted, it is still improper to indiscriminately close the courtroom during the Hearing and enter a blanket sealing order on the Submissions.

First, there is no sound reason for closing the courtroom for the whole Hearing simply because it is possible that parts of the colloquy might discuss sensitive exhibits or evidence. Much of the *Molineux/Sandoval* Hearing will consist of legal argument, for which there is no conceivable basis to bar public access. When, as here, "issues of major public importance are involved, the interests of the public as well as the press . . . 'weigh heavily'" in favor of access. *Danco*, 274 A.D.2d at 8, 711 N.Y.S.2d at 425 (citation omitted). By ensuring public access to the courts and enabling public discussion of the functioning of the judiciary, the news media help "the public to participate in and serve as a check upon the judicial process – an essential component in our structure of self-government." *Globe Newspaper Co. v. Superior Ct.*, 457 U.S. 596, 606 (1982). As courts have recognized time and again, "[w]ithout access to the proceedings, the public cannot analyze and critique the reasoning of the court." *Brown & Williamson Tobacco Corp. v. FTC*, 710 F.2d 1165, 1178 (6th Cir. 1983). There is simply no reason to restrict access to the vast majority of the Hearing, which will relate solely to legal argument and does not necessarily need to focus on the content of the exhibits at all. Moreover, the Parties are represented by skilled counsel on both sides. If they feel that secrecy is required to discuss particular evidence, the proper procedure is to request a sidebar – in open court – and

for the Court to issue an order (after giving leave to the Press Organizations to be heard) permitting the parties to conduct that part of the hearing *in camera*. *Waller v. Georgia*, 467 U.S. 39, 48-49 (1984) (finding closure of entire hearing unjustified where court could have “clos[ed] only those parts of the hearing that jeopardized the interests advanced”). Indeed, even the court in the *Arthur* case emphasized that, “of course, the courtroom has been and will continue to be open to the press and public at all times” and apparently held its *Molineux/Sandoval* hearing in open court. *Arthur*, 178 Misc. 2d at 422, 682 N.Y.S.2d 814.

There is also no legal basis for permitting the Parties’ Submissions to remain under seal in their entirety because the proper procedure is to redact only that information which clears the high bar for sealing and promptly release the rest. The law is settled that courts must order parties to make narrow redactions where possible to avoid overbroad sealing. *See, e.g., Burton*, 189 A.D.2d at 535-36, 597 N.Y.S.2d at 491 (requiring courts to “consider less drastic alternatives to sealing the records which would adequately serve the competing interests”); *Maxim, Inc. v. Feifer*, 145 A.D.3d 516, 518, 43 N.Y.S.3d 313, 316 (1st Dep’t 2016) (“We recognize that it may be easier for the parties and the motion court to seal an entire court record, rather than make a determination on a document by document basis about sealing, but administrative convenience is not a compelling reason to justify sealing.”). There is no justification for keeping non-sensitive sections of the Submissions – such as the Parties’ legal arguments – under seal any longer and those sections at least should be released promptly, pending the hearing on the Press Organization’s request to unseal the remainder.

CONCLUSION

For the reasons stated above, the Press Organizations respectfully request that this Court unseal the Submissions, together with any related applications and orders, and deny the Parties’

application to close the *Molineux/Sandoval* Hearing to the press and public. The Press Organizations also respectfully request that the court hear and determine the issues of sealing and court closure on an expedited basis as far in advance of the Hearing as possible.

Dated: New York, NY
 April 22, 2019

Respectfully submitted,

DAVIS WRIGHT TREMAINE LLP



By: Robert D. Balin
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, SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK
- against -
HARVEY WEINSTEIN,
Defendant.

**AFFIRMATION OF ROBERT D.
BALIN IN SUPPORT OF PRESS
ORGANIZATIONS' MOTION
(A) OPPOSING CLOSURE OF
MOLINEUX/SANDOVAL HEARING,
(B) REQUESTING UNSEALING OF
MOTION PAPERS, AND
(C) REQUESTING EXPEDITED
HEARING**

Ind. No. 2335/18

Robert D. Balin, an attorney duly admitted to practice before the Courts of the State of New York, affirms the following under penalties of perjury:

1. I am a partner of Davis Wright Tremaine LLP, attorneys for non-parties The New York Times Company, The New Yorker, NYP Holdings, Inc. (publisher of the *New York Post*), Daily News, LP (publisher of the New York *Daily News*), The New Yorker, Reuters America LLC, The Associated Press, NBC News and WNBC (divisions of NBC Universal LLC), American Broadcasting Company, Inc., CBS Broadcasting, Inc., Fox News Network LLC, Cable News Network, Inc., Newsday LLC, Dow Jones & Company, Inc. (publisher of the *Wall Street Journal*), Advance Publications, Inc. and the Reporters Committee for Freedom of the Press (the “Press Organizations”).

2. I submit this affirmation in support of the Press Organizations’ motion brought by order to show cause filed April 22, 2019 (a) opposing the applications of the New York County District Attorney’s Office (the “District Attorney”) and defendant Harvey Weinstein (“Weinstein”) to close the upcoming *Molineux/Sandoval* hearing (the “Hearing”) to the public

and press, (b) seeking immediate disclosure of conditionally sealed motion papers and (c) requesting an expedited hearing and determination of the Press Organizations motion as far in advance of the Hearing as possible or, in the alternative, an order postponing the Hearing until after the Press Organizations' motion can be heard and decided. The grounds for the Press Organizations' motion are set forth in the accompanying memorandum of law. I submit this affirmation to annex pertinent exhibits and to set forth facts that are relevant to this motion.

3. On October 5, 2017, *The New York Times* published an article by Jodi Kantor and Megan Twohey, entitled *Harvey Weinstein Paid Off Sexual Harassment Accusers for Decades* (the "NYT Article"), available at <https://www.nytimes.com/2017/10/05/us/harvey-weinstein-harassment-allegations.html>. A true and correct copy of the *NYT* Article is annexed hereto as Exhibit A.

4. On October 10, 2017, *The New Yorker* published an article by Ronan Farrow, entitled *From Aggressive Overtures to Sexual Assault: Harvey Weinstein's Accusers Tell their Stories* (the "New Yorker Article"), available at <https://www.newyorker.com/news/news-desk/from-aggressive-overtures-to-sexual-assault-harvey-weinsteins-accusers-tell-their-stories>. A true and correct copy of the *New Yorker* Article is annexed hereto as Exhibit B.

5. On or about April 16, 2018, Kantor, Twohey and Farrow were awarded the 2018 Pulitzer Prize in Public Service for their reporting on Weinstein. See *The 2018 Pulitzer Prize Winner in Public Service: The New York Times, for reporting led by Jodi Kantor and Megan Twohey, and The New Yorker, for Reporting by Ronan Farrow*, THE PULITZER PRIZES, available at <https://www.pulitzer.org/winners/new-york-times-reporting-led-jodi-kantor-and-megan-twohey-and-new-yorker-reporting-ronan>, a copy of which is annexed hereto as Exhibit C.

6. To date, more than 80 women have accused Harvey Weinstein (“Weinstein”) of sexual misconduct. *See Moniuszko, Sara and Kelley, Cara*, Harvey Weinstein scandal: A complete list of the 87 accusers, USA TODAY, Oct. 27, 2017, <https://www.usatoday.com/story/life/people/2017/10/27/weinstein-scandal-complete-list-accusers/804663001/>, a copy of which is annexed hereto as Exhibit D.

7. On May 31, 2018, a grand jury indicted Weinstein on two rape charges and one charge of committing a criminal sexual act, which were based on allegations that Weinstein attacked two women in 2004 and 2013, respectively. On July 2, 2018, Weinstein was indicted on one additional count of committing a criminal sexual act and two more counts of predatory sexual assault relating to the abuse of a third woman in 2006. Weinstein has pled not guilty to all counts. On October 11, 2018, this Court dismissed the single charge based on the 2004 incident.

8. On October 12, 2018, American Broadcast Company, Inc. (“ABC”) filed a letter with this Court (the “ABC Letter”) requesting that the Court unseal documents that had been referred to during a hearing on October 11, 2018 as having been filed under seal. The ABC Letter also requested that all filings in this action be listed on the public docket, which at that time, contained no entries for any motions made to this Court. A true and correct copy of the ABC Letter is annexed hereto as Exhibit E. The Court declined to rule on the ABC Letter.

9. Weinstein’s application to dismiss the remaining five counts of sexual misconduct and rape charges was denied on December 20, 2018. Trial is currently scheduled to begin on June 3, 2019.

10. On or about April 5, 2019, Trevor Franklin, the managing clerk of the law firm representing the Press Organizations asked the Court Clerk whether any documents had been filed under seal in this case and was informed that there were none. The Court Clerk provided

Mr. Franklin a copy of the case file and, upon inspection, there was no order from the Court conditionally sealing any documents or any motion papers seeking to restrict public access to the case file.

11. Annexed hereto as Exhibit F is a true and correct copy of the Decision and Order of this Court, entered on April 17, 2019, inviting interested members of the public and press to file written submissions and be heard on why the Court should not close the courtroom for the duration of the Hearing and continue to seal conditionally sealed filings submitted by Weinstein and the People.

12. Annexed hereto as Exhibit G is a true and correct copy of a letter dated April 16, 2019 from Assistant District Attorney Joan Illuzzi-Orbon to the Court.

13. Annexed hereto as Exhibit H is a true and correct copy of a letter dated April 16, 2019 from Ronald S. Sullivan Jr., who represents Weinstein in the above-captioned case, to the Court.

Dated: New York, New York
April 22, 2019



ROBERT D. BALIN

EXHIBIT A

Harvey Weinstein Paid Off Sexual Harassment Accusers for Decades

By Jodi Kantor and Megan Twohey

Oct. 5, 2017

Update: The Weinstein Company's board has fired Harvey Weinstein after reports of sexual harassment complaints against him. Find more coverage here.

Two decades ago, the Hollywood producer Harvey Weinstein invited Ashley Judd to the Peninsula Beverly Hills hotel for what the young actress expected to be a business breakfast meeting. Instead, he had her sent up to his room, where he appeared in a bathrobe and asked if he could give her a massage or she could watch him shower, she recalled in an interview.

"How do I get out of the room as fast as possible without alienating Harvey Weinstein?" Ms. Judd said she remembers thinking.

In 2014, Mr. Weinstein invited Emily Nestor, who had worked just one day as a temporary employee, to the same hotel and made another offer: If she accepted his sexual advances, he would boost her career, according to accounts she provided to colleagues who sent them to Weinstein Company executives. The following year, once again at the Peninsula, a female assistant said Mr. Weinstein badgered her into giving him a massage while he was naked, leaving her "crying and very distraught," wrote a colleague, Lauren O'Connor, in a searing memo asserting sexual harassment and other misconduct by their boss.

"There is a toxic environment for women at this company," Ms. O'Connor said in the letter, addressed to several executives at the company run by Mr. Weinstein.

An investigation by The New York Times found previously undisclosed allegations against Mr. Weinstein stretching over nearly three decades, documented through interviews with current and former employees and film industry workers, as well as legal records, emails and internal documents from the businesses he has run, Miramax and the Weinstein Company.

During that time, after being confronted with allegations including sexual harassment and unwanted physical contact, Mr. Weinstein has reached at least eight settlements with women, according to two company officials speaking on the condition of anonymity. Among the recipients, The Times found, were a young assistant in New York in 1990, an actress in 1997, an assistant in London in 1998, an Italian model in 2015 and Ms. O'Connor shortly after, according to records and those familiar with the agreements.

In a statement to The Times on Thursday afternoon, Mr. Weinstein said: “I appreciate the way I’ve behaved with colleagues in the past has caused a lot of pain, and I sincerely apologize for it. Though I’m trying to do better, I know I have a long way to go.”

He added that he was working with therapists and planning to take a leave of absence to “deal with this issue head on.”

Lisa Bloom, a lawyer advising Mr. Weinstein, said in a statement that “he denies many of the accusations as patently false.” In comments to The Times earlier this week, Mr. Weinstein said that many claims in Ms. O’Connor’s memo were “off base” and that they had parted on good terms.



Some of Mr. Weinstein’s films include, from left to right, “Sex, Lies, and Videotape,” “Pulp Fiction” and “Good Will Hunting.”

He and his representatives declined to comment on any of the settlements, including providing information about who paid them. But Mr. Weinstein said that in addressing employee concerns about workplace issues, “my motto is to keep the peace.”

Ms. Bloom, who has been advising Mr. Weinstein over the last year on gender and power dynamics, called him “an old dinosaur learning new ways.” She said she had “explained to him that due to the power difference between a major studio head like him and most others in the industry, whatever his motives, some of his words and behaviors can be perceived as inappropriate, even intimidating.”

Though Ms. O’Connor had been writing only about a two-year period, her memo echoed other women’s complaints. Mr. Weinstein required her to have casting discussions with aspiring actresses after they had private appointments in his hotel room, she said, her description matching those of other former employees. She suspected that she and other female Weinstein employees, she wrote, were being used to facilitate liaisons with “vulnerable women who hope he will get them work.”

The allegations piled up even as Mr. Weinstein helped define popular culture. He has collected six best-picture Oscars and turned out a number of touchstones, from the films “Sex, Lies, and Videotape,” “Pulp Fiction” and “Good Will Hunting” to the television show “Project Runway.” In

public, he presents himself as a liberal lion, a champion of women and a winner of not just artistic but humanitarian awards.

In 2015, the year Ms. O'Connor wrote her memo, his company distributed “The Hunting Ground,” a documentary about campus sexual assault. A longtime Democratic donor, he hosted a fund-raiser for Hillary Clinton in his Manhattan home last year. He employed Malia Obama, the oldest daughter of former President Barack Obama, as an intern this year, and recently helped endow a faculty chair at Rutgers University in Gloria Steinem’s name. During the Sundance Film Festival in January, when Park City, Utah, held its version of nationwide women’s marches, Mr. Weinstein joined the parade.



Harvey Weinstein and Hillary Clinton in 2012. Mr. Weinstein held a fund-raiser for Mrs. Clinton at his Manhattan home last year. Larry Busacca/Getty Images

“From the outside, it seemed golden — the Oscars, the success, the remarkable cultural impact,” said Mark Gill, former president of Miramax Los Angeles when the company was owned by Disney. “But behind the scenes, it was a mess, and this was the biggest mess of all,” he added, referring to Mr. Weinstein’s treatment of women.

Dozens of Mr. Weinstein’s former and current employees, from assistants to top executives, said they knew of inappropriate conduct while they worked for him. Only a handful said they ever confronted him.

Mr. Weinstein enforced a code of silence; employees of the Weinstein Company have contracts saying they will not criticize it or its leaders in a way that could harm its “business reputation” or “any employee’s personal reputation,” a recent document shows. And most of the women accepting payouts agreed to confidentiality clauses prohibiting them from speaking about the deals or the events that led to them.

Charles Harder, a lawyer representing Mr. Weinstein, said it was not unusual to enter into settlements to avoid lengthy and costly litigation. He added, “It’s not evidence of anything.”

At Fox News, where the conservative icons Roger E. Ailes and Bill O’Reilly were accused of harassment, women have received payouts well into the millions of dollars. But most of the women involved in the Weinstein agreements collected between roughly \$80,000 and \$150,000, according to people familiar with the negotiations.

In the wake of Ms. O’Connor’s 2015 memo, some Weinstein Company board members and executives, including Mr. Weinstein’s brother and longtime partner, Bob, 62, were alarmed about the allegations, according to several people who spoke on the condition of anonymity. In the end, though, board members were assured there was no need to investigate. After reaching a settlement with Mr. Weinstein, Ms. O’Connor withdrew her complaint and thanked him for the career opportunity he had given her.

“The parties made peace very quickly,” Ms. Bloom said.

Through her lawyer, Nicole Page, Ms. O’Connor declined to be interviewed. In the memo, she explained how unnerved she was by what she witnessed or encountered while a literary scout and production executive at the company. “I am just starting out in my career, and have been and remain fearful about speaking up,” Ms. O’Connor wrote. “But remaining silent is causing me great distress.”

In speaking out about her hotel episode, Ms. Judd said in a recent interview, “Women have been talking about Harvey amongst ourselves for a long time, and it’s simply beyond time to have the conversation publicly.”

A Common Narrative

Ms. Nestor, a law and business school student, accepted Mr. Weinstein’s breakfast invitation at the Peninsula because she did not want to miss an opportunity, she later told colleagues. After she arrived, he offered to help her career while boasting about a series of famous actresses he claimed to have slept with, according to accounts that colleagues compiled after hearing her story and then sent on to company executives.

“She said he was very persistent and focused though she kept saying no for over an hour,” one internal document said. Ms. Nestor, who declined to comment for this article, refused his bargain, the records noted. “She was disappointed that he met with her and did not seem to be interested

in her résumé or skill set.” The young woman chose not to report the episode to human resources personnel, but the allegations came to management’s attention through other employees.

Across the years and continents, accounts of Mr. Weinstein’s conduct share a common narrative: Women reported to a hotel for what they thought were work reasons, only to discover that Mr. Weinstein, who has been married for most of three decades, sometimes seemed to have different interests. His home base was New York, but his rolling headquarters were luxury hotels: the Peninsula Beverly Hills and the Savoy in London, the Hôtel du Cap-Eden-Roc near the Cannes Film Festival in France and the Stein Eriksen Lodge near the Sundance Film Festival.



The Peninsula Beverly Hills, a hotel where Mr. Weinstein has been accused of sexually harassing women in the entertainment industry. FG/Bauer-Griffin, via Getty Images

Working for Mr. Weinstein could mean getting him out of bed in the morning and doing “turndown duty” late at night, preparing him for sleep. Like the colleague cited in Ms. O’Connor’s memo, some junior employees required to perform those tasks said they were disturbing.

In interviews, eight women described varying behavior by Mr. Weinstein: appearing nearly or fully naked in front of them, requiring them to be present while he bathed or repeatedly asking for a massage or initiating one himself. The women, typically in their early or middle 20s and hoping to get a toehold in the film industry, said he could switch course quickly — meetings and clipboards one moment, intimate comments the next. One woman advised a peer to wear a parka when summoned for duty as a layer of protection against unwelcome advances.

Laura Madden, a former employee who said Mr. Weinstein prodded her for massages at hotels in Dublin and London beginning in 1991, said he had a way of making anyone who objected feel like an outlier. “It was so manipulative,” she said in an interview. “You constantly question yourself — am I the one who is the problem?”

“I don’t know anything about that,” Mr. Weinstein said.

Most women who told The Times that they experienced misconduct by Mr. Weinstein had never met one another. They range in age from early 20s to late 40s and live in different cities. Some said they did not report the behavior because there were no witnesses and they feared retaliation by Mr. Weinstein. Others said they felt embarrassed. But most confided in co-workers.

Ms. Madden later told Karen Katz, a friend and colleague in the acquisitions department, about Mr. Weinstein’s overtures, including a time she locked herself in the bathroom of his hotel room, sobbing. “We were so young at the time,” said Ms. Katz, now a documentary filmmaker. “We did not understand how wrong it was or how Laura should deal with it.”

Others in the London office said the same. “I was pretty disturbed and angry,” said Sallie Hodges, another former employee, recalling the accounts she heard from colleagues. “That’s kind of the way things were.”

The human resources operation was considered weak in New York and worse in London, so some employees banded together in solidarity. “If a female executive was asked to go to a meeting solo, she and a colleague would generally double up” so as not to be alone with Mr. Weinstein, recalled Mr. Gill, the former president of Miramax Los Angeles.

Many women who worked with Mr. Weinstein said they never experienced sexual harassment or knew of anyone who did, and recalled him as a boss who gave them valuable opportunities at young ages. Some described long and satisfying careers with him, praising him as a mentor and advocate.

But in interviews, some of the former employees who said they had troubling experiences with Mr. Weinstein asked a common question: How could allegations repeating the same pattern — young women, a powerful male producer, even some of the same hotels — have accumulated for almost three decades?

“It wasn’t a secret to the inner circle,” said Kathy DeClesis, Bob Weinstein’s assistant in the early 1990s. She supervised a young woman who left the company abruptly after an encounter with Harvey Weinstein and who later received a settlement, according to several former employees.

Speaking up could have been costly. A job with Mr. Weinstein was a privileged perch at the nexus of money, fame and art, and plenty of his former assistants have risen high in Hollywood. He could be charming and generous: gift baskets, flowers, personal or career help and cash. At the Cannes Film Festival, according to several former colleagues, he sometimes handed out thousands of dollars as impromptu bonuses.

Mr. Weinstein was a volcanic personality, though, given to fits of rage and personal lashings of male and female employees alike. When a female guest of his had to wait for a hotel room upgrade, he yelled that Ms. O'Connor would be better off marrying a “fat, rich Jewish” man because she was probably just good for “being a wife” and “making babies,” she wrote in her memo. (He added some expletives, she said.) His treatment of women was sometimes written off as just another form of toxicity, according to multiple former employees.

In the fall of 1998, a 25-year-old London assistant named Zelda Perkins confronted Mr. Weinstein. According to former colleagues, she and several co-workers had been regularly subjected to inappropriate requests or comments in hotel rooms, and she was particularly concerned about the treatment of another woman in the office. She told Mr. Weinstein that he had to stop, according to the former colleagues, and that she would go public or initiate legal action unless he changed his behavior.

Steve Hutensky, one of Miramax’s entertainment lawyers, was dispatched to London to negotiate a settlement with Ms. Perkins and her lawyer. He declined to comment for this article.

Ms. Perkins, now a theater producer in London, also declined to comment for this article, saying that she could not discuss her work at Miramax or whether she had entered into any agreements.

Months after the settlement, Mr. Weinstein triumphed at the Oscars, with “Life Is Beautiful” and “Shakespeare in Love” winning 10 awards. A few years later, Mr. Weinstein, who had produced a series of British-themed movies, was made a Commander of the British Empire, an honorary title just short of knighthood.

‘Coercive Bargaining’

For actors, a meeting with Mr. Weinstein could yield dazzling rewards: scripts, parts, award campaigns, magazine coverage, influence on lucrative endorsement deals. He knew how to blast small films to box office success, and deliver polished dramas like “The King’s Speech” and popular attractions like the “Scary Movie” franchise. Mr. Weinstein’s films helped define femininity, sex and romance, from Catherine Zeta-Jones in “Chicago” to Jennifer Lawrence in “Silver Linings Playbook.”



The actress Ashley Judd in the 1997 film “Kiss the Girls.” Ms. Judd said that Mr. Weinstein sexually harassed her two decades ago in his room at the Peninsula.

Paramount Pictures, via Photofest

But movies were also his private leverage. When Mr. Weinstein invited Ms. Judd to breakfast in Beverly Hills, she had been shooting the thriller “Kiss the Girls” all night, but the meeting seemed too important to miss. After arriving at the hotel lobby, she was surprised to learn that they would be talking in his suite; she decided to order cereal, she said, so the food would come quickly and she could leave.

Mr. Weinstein soon issued invitation after invitation, she said. Could he give her a massage? When she refused, he suggested a shoulder rub. She rejected that too, she recalled. He steered her toward a closet, asking her to help pick out his clothing for the day, and then toward the bathroom. Would she watch him take a shower? she remembered him saying.

“I said no, a lot of ways, a lot of times, and he always came back at me with some new ask,” Ms. Judd said. “It was all this bargaining, this coercive bargaining.”

To get out of the room, she said, she quipped that if Mr. Weinstein wanted to touch her, she would first have to win an Oscar in one of his movies. She recalled feeling “panicky, trapped,” she said in the interview. “There’s a lot on the line, the cachet that came with Miramax.”

Not long afterward, she related what had happened to her mother, the singer Naomi Judd, who confirmed their conversation to a Times reporter. Years later, Ashley Judd appeared in two Weinstein films without incident, she said. In 2015, she shared an account of the episode in the

hotel room with “Variety” without naming the man involved.



In 1997, Mr. Weinstein reached a settlement with the actor Rose McGowan after an episode in a hotel room during the Sundance Film Festival. She had just appeared in the movie “Scream,” above. Dimension Films, via Photofest

In 1997, Mr. Weinstein reached a previously undisclosed settlement with Rose McGowan, then a 23-year-old-actress, after an episode in a hotel room during the Sundance Film Festival. The \$100,000 settlement was “not to be construed as an admission” by Mr. Weinstein, but intended to “avoid litigation and buy peace,” according to the legal document, which was reviewed by The Times. Ms. McGowan had just appeared in the slasher film “Scream” and would later star in the television show “Charmed.” She declined to comment.

Increased Scrutiny

Just months before Ms. O’Connor wrote her memo, a young female employee quit after complaining of being forced to arrange what she believed to be assignations for Mr. Weinstein, according to two people familiar with her departure. The woman, who asked not to be identified to protect her privacy, said a nondisclosure agreement prevented her from commenting.

Soon, complaints about Mr. Weinstein’s behavior prompted the board of his company to take notice.

In March 2015, Mr. Weinstein had invited Ambra Battilana, an Italian model and aspiring actress, to his TriBeCa office on a Friday evening to discuss her career. Within hours, she called the police. Ms. Battilana told them that Mr. Weinstein had grabbed her breasts after asking if they were real and put his hands up her skirt, the police report says.

The claims were taken up by the New York Police Department's Special Victims Squad and splashed across the pages of tabloids, along with reports that the woman had worked with investigators to secretly record a confession from Mr. Weinstein. The Manhattan district attorney's office later declined to bring charges.

But Mr. Weinstein made a payment to Ms. Battilana, according to people familiar with the settlement, speaking on the condition of anonymity about the confidential agreement.

The public nature of the episode concerned some executives and board members of the Weinstein Company. (Harvey and Bob Weinstein together own 42 percent of the privately held business.) When several board members pressed Mr. Weinstein about it, he insisted that the woman had set him up, colleagues recalled.

Ms. Battilana had testified in court proceedings against associates of former Prime Minister Silvio Berlusconi of Italy who are accused of procuring women for alleged sex parties, and the Italian news media also reported that, years ago, Ms. Battilana accused a septuagenarian boyfriend of sexual harassment, a complaint that was apparently dismissed. Ms. Battilana did not respond to requests for comment. Her lawyer, Mauro Rufini, could not be reached for comment.

After the episode, Lance Maerov, a board member, said he successfully pushed for a code of behavior for the company that included detailed language about sexual harassment.

Then Ms. O'Connor's memo hit, with page after page of detailed accusations. In describing the experiences of women at the company, including her own, she wrote, "The balance of power is me: 0, Harvey Weinstein: 10."

She was a valued employee — Mr. Weinstein described her as "fantastic," "a great person," "a brilliant executive" — so the complaint rattled top executives, including Bob Weinstein. When the board was notified of it by email, Mr. Maerov insisted that an outside lawyer determine whether the allegations were true, he said in an interview.



Mr. Weinstein in 1999 with the winners of the best-picture Oscar for “Shakespeare in Love.” Hector Mata/Agence France—Presse

But the inquiry never happened. Mr. Weinstein had reached a settlement with Ms. O’Connor, and there was no longer anything to investigate.

“Because this matter has been resolved and no further action is required, I withdraw my complaint,” Ms. O’Connor wrote in an email to the head of human resources six days after sending her memo. She also wrote a letter to Mr. Weinstein thanking him for the opportunity to learn about the entertainment industry.

Rachel Abrams and William K. Rashbaum contributed reporting. Grace Ashford contributed research.

A version of this article appears in print on Oct. 6, 2017, on Page A1 of the New York edition with the headline: Sexual Misconduct Claims Trail a Hollywood Mogul

READ 1977 COMMENTS

EXHIBIT B

FROM AGGRESSIVE OVERTURES TO SEXUAL ASSAULT: HARVEY WEINSTEIN'S ACCUSERS TELL THEIR STORIES

Multiple women share harrowing accounts of sexual assault and harassment by the film executive.

By Ronan Farrow October 10, 2017

This story was first published on newyorker.com on October 10, 2017, at 10:47 A.M. The version below appears in the October 23, 2017, issue.

1.

Since the establishment of the first studios, a century ago, there have been few movie executives as dominant, or as domineering, as Harvey Weinstein. He co-founded the production-and-distribution companies Miramax and the Weinstein Company, helping to reinvent the model for independent films with movies including “Sex, Lies, and Videotape,” “The Crying Game,” “Pulp Fiction,” “The English Patient,” “Shakespeare in Love,” and “The King’s Speech.” Beyond Hollywood, he has exercised his influence as a prolific fund-raiser for Democratic Party candidates, including Barack Obama and Hillary Clinton. Weinstein combined a keen eye for promising scripts, directors, and actors with a bullying, even threatening, style of doing business, inspiring both fear and gratitude. His movies have earned more than three hundred Oscar nominations, and, at the annual awards ceremonies, he has been thanked more than almost anyone else in movie history, ranking just after Steven Spielberg and right before God.

For more than twenty years, Weinstein, who is now sixty-five, has also been trailed by rumors of sexual harassment and assault. His behavior has been an open secret to many in Hollywood and beyond, but previous attempts by many publications, including *The New Yorker*, to investigate and publish the story over the years fell short of the demands of journalistic evidence. Too few people were willing to speak, much less allow a

reporter to use their names, and Weinstein and his associates used nondisclosure agreements, payoffs, and legal threats to suppress their accounts. Asia Argento, an Italian film actress and director, said that she did not speak out until now—Weinstein, she told me, forcibly performed oral sex on her—because she feared that Weinstein would “crush” her. “I know he has crushed a lot of people before,” Argento said. “That’s why this story—in my case, it’s twenty years old, some of them are older—has never come out.”

On October 5th, the *New York Times*, in a powerful report by Jodi Kantor and Megan Twohey, revealed multiple allegations of sexual harassment against Weinstein, an article that led to the resignation of four members of the Weinstein Company’s all-male board, and to Weinstein’s firing.

The story, however, is complex, and there is more to know and to understand. In the course of a ten-month investigation, I was told by thirteen women that, between the nineteen-nineties and 2015, Weinstein sexually harassed or assaulted them. Their allegations corroborate and overlap with the *Times*’s revelations, and also include far more serious claims.

Three of the women—among them Argento and a former aspiring actress named Lucia Evans—told me that Weinstein had raped them, forcibly performing or receiving oral sex or forcing vaginal sex. Four women said that they had experienced unwanted touching that could be classified as an assault. In an audio recording captured during a New York Police Department sting operation in 2015, Weinstein admits to groping a Filipina-Italian model named Ambra Battilana Gutierrez, describing it as behavior he is “used to.” Four of the women I interviewed cited encounters in which Weinstein exposed himself or masturbated in front of them.

Sixteen former and current executives and assistants at Weinstein’s companies told me that they witnessed or had knowledge of unwanted sexual advances and touching at events associated with Weinstein’s films and in the workplace. They and others described a pattern of professional meetings that were little more than thin pretexts for sexual advances on young actresses and models. All sixteen said that the behavior was widely known within both Miramax and the Weinstein Company. Messages sent by Irwin Reiter, a senior company executive, to Emily Nestor, one of the women who alleged that she was harassed, described the “mistreatment of women” as a serial

problem that the Weinstein Company had been struggling with in recent years. Other employees described what was, in essence, a culture of complicity at Weinstein's places of business, with numerous people throughout his companies fully aware of his behavior but either abetting it or looking the other way. Some employees said that they were enlisted in a subterfuge to make the victims feel safe. A female executive with the company described how Weinstein's assistants and others served as a "honeypot"—they would initially join a meeting along with a woman Weinstein was interested in, but then Weinstein would dismiss them, leaving him alone with the woman. (On October 10th, the Weinstein Company's board issued a statement, writing that "these allegations come as an utter surprise to the Board. Any suggestion that the Board had knowledge of this conduct is false.")

Virtually all of the people I spoke with told me that they were frightened of retaliation. "If Harvey were to discover my identity, I'm worried that he could ruin my life," one former employee told me. Many said that they had seen Weinstein's associates confront and intimidate those who crossed him, and feared that they would be similarly targeted. Four actresses, including Mira Sorvino and Rosanna Arquette, told me they suspected that, after they rejected Weinstein's advances or complained about them to company representatives, Weinstein had them removed from projects or dissuaded people from hiring them. Multiple sources said that Weinstein frequently bragged about planting items in media outlets about those who spoke against him; these sources feared similar retribution. Several pointed to Gutierrez's case: after she went to the police, negative items discussing her sexual history and impugning her credibility began rapidly appearing in New York gossip pages. (In the taped conversation, part of which *The New Yorker* posted online, Weinstein asks Gutierrez to join him for "five minutes," and warns, "Don't ruin your friendship with me for five minutes.")

Several former employees told me that they were speaking about Weinstein's alleged behavior now because they hoped to protect women in the future. "This wasn't a one-off. This wasn't a period of time," an executive who worked for Weinstein for many years told me. "This was ongoing predatory behavior toward women—whether they consented or not."

It's likely that the women who spoke to me have recently felt increasingly emboldened to talk about their experiences because of the way the world has changed regarding

issues of sex and power. Their disclosures follow in the wake of stories alleging sexual misconduct by public figures, including Donald Trump, Bill O'Reilly, Roger Ailes, and Bill Cosby. In October, 2016, a month before the election, a tape emerged of Trump telling a celebrity-news reporter, "And when you're a star, they let you do it. You can do anything. . . . Grab 'em by the pussy. You can do anything." This past April, O'Reilly, a host at Fox News, was forced to resign after Fox was discovered to have paid five women millions of dollars in exchange for silence about their accusations of sexual harassment. Ailes, the former head of Fox News, resigned in July, 2016, after he was accused of sexual harassment. Cosby went on trial this summer, charged with drugging and sexually assaulting a woman. The trial ended with a hung jury.

In the *Times* piece, Weinstein made an initial effort at damage control by partly acknowledging what he had done, saying, "I appreciate the way I've behaved with colleagues in the past has caused a lot of pain, and I sincerely apologize for it." In an interview with the *New York Post*, he said, "I've got to deal with my personality, I've got to work on my temper, I have got to dig deep. I know a lot of people would like me to go into a facility, and I may well just do that—I will go anywhere I can learn more about myself." He went on, "In the past I used to compliment people, and some took it as me being sexual, I won't do that again." In his written statement to the *Times*, Weinstein claimed that he would "channel that anger" into a fight against the leadership of the National Rifle Association. He also said that it was not "coincidental" that he was organizing a foundation for women directors at the University of Southern California. "It will be named after my mom and I won't disappoint her." (U.S.C. has since rejected his funding pledge.)

Sallie Hofmeister, a spokesperson for Weinstein, issued a new statement in response to the allegations detailed here. It reads in full: "Any allegations of non-consensual sex are unequivocally denied by Mr. Weinstein. Mr. Weinstein has further confirmed that there were never any acts of retaliation against any women for refusing his advances. Mr. Weinstein obviously can't speak to anonymous allegations, but with respect to any women who have made allegations on the record, Mr. Weinstein believes that all of these relationships were consensual. Mr. Weinstein has begun counseling, has listened to the community and is pursuing a better path. Mr. Weinstein is hoping that, if he makes enough progress, he will be given a second chance."

While Weinstein and his representatives have said that the incidents were consensual, and were not widespread or severe, the women I spoke to tell a very different story.

2.

Lucia Stoller, now Lucia Evans, was approached by Weinstein at Cipriani Upstairs, a club in New York, in 2004, the summer before her senior year at Middlebury College. Evans, who is now a marketing consultant, wanted to be an actress, and although she had heard rumors about Weinstein she let him have her number. Weinstein began calling her late at night, or having an assistant call her, asking to meet. She declined, but said that she would do readings during the day for a casting executive. Before long, an assistant called to set up a daytime meeting at the Miramax office in Tribeca, first with Weinstein and then with a casting executive, who was a woman. “I was, like, Oh, a woman, great, I feel safe,” Evans said.

When Evans arrived for the meeting, the building was full of people. She was led to an office with exercise equipment in it, and takeout boxes on the floor. Weinstein was there, alone. Evans said that she found him frightening. “The type of control he exerted—it was very real,” she told me. “Even just his presence was intimidating.”

In the meeting, Evans recalled, “he immediately was simultaneously flattering me and demeaning me and making me feel bad about myself.” Weinstein told her that she’d “be great in ‘Project Runway’”—the show, which Weinstein helped produce, premiered later that year—but only if she lost weight. He also told her about two scripts, a horror movie and a teen love story, and said one of his associates would discuss them with her.

“At that point, after that, is when he assaulted me,” Evans said. “He forced me to perform oral sex on him.” As she objected, Weinstein took his penis out of his pants and pulled her head down onto it. “I said, over and over, ‘I don’t want to do this, stop, don’t,’ ” she recalled. “I tried to get away, but maybe I didn’t try hard enough. I didn’t want to kick him or fight him.” In the end, she said, “he’s a big guy. He overpowered me.” She added, “I just sort of gave up. That’s the most horrible part of it, and that’s why he’s been able to do this for so long to so many women: people give up, and then they feel like it’s their fault.”

Weinstein appeared to find the encounter unremarkable. “It was like it was just another day for him,” Evans said. “It was no emotion.” Afterward, he acted as if nothing had happened. She wondered how Weinstein’s staff could not know what was going on.

Following the encounter, she met with the female casting executive, who sent her the scripts, and also came to one of her acting-class readings a few weeks later. (Evans does not believe that the executive was aware of Weinstein’s behavior.) Weinstein, Evans said, began calling her again late at night. She told me that the entire sequence of events had a routine quality. “It feels like a very streamlined process,” she said. “Female casting director, Harvey wants to meet. Everything was designed to make me feel comfortable before it happened. And then the shame in what happened was also designed to keep me quiet.”

Evans said that, after the incident, “I just put it in a part of my brain and closed the door.” She continued to blame herself for not fighting harder. “It was always my fault for not stopping him,” she said. “I had an eating problem for years. I was disgusted with myself. It’s funny, all these unrelated things I did to hurt myself because of this one thing.” Evans told friends some of what had happened, but felt largely unable to talk about it. “I ruined several really good relationships because of this. My schoolwork definitely suffered, and my roommates told me to go to a therapist because they thought I was going to kill myself.”

In the years that followed, Evans encountered Weinstein occasionally. Once, while she was walking her dog in Greenwich Village, she saw him getting into a car. “I very clearly saw him. I made eye contact,” she said. “I remember getting chills down my spine just looking at him. I was so horrified. I have nightmares about him to this day.”

3.

Asia Argento, who was born in Rome, played the role of a glamorous thief named Beatrice in the crime drama “B. Monkey,” which was released in the U.S. in 1999. The distributor was Miramax. In a series of long and often emotional interviews, Argento told me that Weinstein assaulted her while they were working together.

At the time, Argento was twenty-one and had twice won the Italian equivalent of the Oscar. Argento said that, in 1997, one of Weinstein’s producers invited her to what she

understood to be a party thrown by Miramax at the Hôtel du Cap-Eden-Roc, on the French Riviera. Argento felt professionally obliged to attend. When the producer led her upstairs that evening, she said, there was no party, only a hotel room, empty but for Weinstein: “I’m, like, ‘Where is the fucking party?’” She recalled the producer telling her, “Oh, we got here too early,” before he left her alone with Weinstein. (The producer denies bringing Argento to the room that night.) At first, Weinstein was solicitous, praising her work. Then he left the room. When he returned, he was wearing a bathrobe and holding a bottle of lotion. “He asks me to give a massage. I was, like, ‘Look, man, I am no fucking fool,’” Argento told me. “But, looking back, I am a fucking fool. And I am still trying to come to grips with what happened.”

Argento said that, after she reluctantly agreed to give Weinstein a massage, he pulled her skirt up, forced her legs apart, and performed oral sex on her as she repeatedly told him to stop. Weinstein “terrified me, and he was so big,” she said. “It wouldn’t stop. It was a nightmare.”

At some point, she stopped saying no and feigned enjoyment, because she thought it was the only way the assault would end. “I was not willing,” she told me. “I said, ‘No, no, no.’ . . . It’s twisted. A big fat man wanting to eat you. It’s a scary fairy tale.” Argento, who insisted that she wanted to tell her story in all its complexity, said that she didn’t physically fight him off, something that has prompted years of guilt.

“The thing with being a victim is I felt responsible,” she said. “Because, if I were a strong woman, I would have kicked him in the balls and run away. But I didn’t. And so I felt responsible.” She described the incident as a “horrible trauma.” Decades later, she said, oral sex is still ruined for her. “I’ve been damaged,” she told me. “Just talking to you about it, my whole body is shaking.”

Argento recalled sitting on the bed after the incident, her clothes “in shambles,” her makeup smeared. She said that she told Weinstein, “I am not a whore,” and that he began laughing. He said he would put the phrase on a T-shirt. Afterward, Argento said, “He kept contacting me.” For a few months, Weinstein seemed obsessed, offering her expensive gifts.

What complicates the story, Argento readily allowed, is that she eventually yielded to Weinstein’s further advances and even grew close to him. Weinstein dined with her,

and introduced her to his mother. Argento told me, “He made it sound like he was my friend and he really appreciated me.” She said that she had consensual sexual relations with him multiple times over the course of the next five years, though she described the encounters as one-sided and “onanistic.” The first occasion, several months after the alleged assault, came before the release of “B. Monkey.” “I felt I had to,” she said. “Because I had the movie coming out and I didn’t want to anger him.” She believed that Weinstein would ruin her career if she didn’t comply. Years later, when she was a single mother dealing with childcare, Weinstein offered to pay for a nanny. She said that she felt “obliged” to submit to his sexual advances.

Argento told me that she knew this contact would be used to attack the credibility of her allegation. In part, she said, the initial assault made her feel overpowered each time she encountered Weinstein, even years later. “Just his body, his presence, his face, bring me back to the little girl that I was when I was twenty-one,” she told me. “When I see him, it makes me feel little and stupid and weak.” She broke down as she struggled to explain. “After the rape, he won,” she said.

In 2000, Argento released “Scarlet Diva,” a movie that she wrote and directed. In the film, a heavyset producer corners Anna, the character played by Argento, in a hotel room, asks her for a massage, and tries to assault her. After the movie came out, women began approaching Argento, saying that they recognized Weinstein’s behavior in the portrayal. “People would ask *me* about *him* because of the scene in the movie,” she said. Some recounted similar details to her: meetings and professional events moved to hotel rooms, bathrobes and massage requests, and, in one other case, forced oral sex.

Weinstein, according to Argento, saw the film after it was released in the U.S., and apparently recognized himself. “Ha, ha, very funny,” Argento remembered him saying to her. But he also said that he was “sorry for whatever happened.” The movie’s most significant departure from the real-life incident, Argento told me, was how the hotel-room scene ended. “In the movie I wrote,” she said, “I ran away.”

Other women were too afraid to allow me to use their names, but their stories are uncannily similar to these allegations. One, a woman who worked with Weinstein, explained her reluctance to be identified. “He drags your name through the mud, and he’ll come after you hard with his legal team.”

Like others I spoke to, this woman said that Weinstein brought her to a hotel room under a professional pretext, changed into a bathrobe, and, she said, “forced himself on me sexually.” She told him no, repeatedly and clearly. Afterward, she experienced “horror, disbelief, and shame,” and considered going to the police. “I thought it would be a ‘he said, she said,’ and I thought about how impressive his legal team is, and I thought about how much I would lose, and I decided to just move forward,” she said. The woman continued to have professional contact with Weinstein after the alleged rape, and acknowledged that subsequent communications between them might suggest a normal working relationship. “I was in a vulnerable position and I needed my job,” she told me. “It just increases the shame and the guilt.”

4.

Mira Sorvino, who starred in several of Weinstein’s films, told me that he sexually harassed her and tried to pressure her into a physical relationship while they were working together. She said that, at the Toronto International Film Festival in September, 1995, she found herself in a hotel room with Weinstein, who produced the movie she was there to promote, “Mighty Aphrodite,” for which she later won an Academy Award. “He started massaging my shoulders, which made me very uncomfortable, and then tried to get more physical, sort of chasing me around,” she recalled. She scrambled for ways to ward him off, telling him that it was against her religion to date married men. (At the time, Weinstein was married to Eve Chilton, a former assistant.) Then she left the room.

A few weeks later, in New York City, her phone rang after midnight. It was Weinstein, saying that he had new marketing ideas for the film and asking to get together. Sorvino offered to meet him at an all-night diner, but he said he was coming over to her apartment and hung up. “I freaked out,” she told me. She called a friend and asked him to come over and pose as her boyfriend. The friend hadn’t arrived by the time Weinstein rang her doorbell. “Harvey had managed to bypass my doorman,” she said. “I opened the door terrified, brandishing my twenty-pound Chihuahua mix in front of me, as though that would do any good.” When she told Weinstein that her new boyfriend was on his way, he became dejected and left.

Sorvino said that she struggled for years with whether to come forward with her story, partly because she was aware that it was mild compared with the experiences of other

women, including Sophie Dix, an actress she spoke to at the time. (Dix told me that she had locked herself in a hotel bathroom to escape Weinstein, and that he had masturbated in front of her. She said it was “a classic case” of “someone not understanding the word ‘no.’ . . . I must have said no a thousand times.”) The fact that Weinstein was so instrumental in Sorvino’s success also made her hesitate: “I have great respect for Harvey as an artist, and owe him and his brother a debt of gratitude for the early success in my career, including the Oscar.” She had professional contact with Weinstein for years after the incident, and remains a close friend of his brother and business partner, Bob Weinstein. (She never told Bob about his brother’s behavior.)

Sorvino said that she felt afraid and intimidated, and that the incidents had a significant impact on her. When she told a female employee at Miramax about the harassment, the woman’s reaction “was shock and horror that I had mentioned it.” Sorvino appeared in a few more of Weinstein’s films afterward, but felt that saying no to Weinstein and reporting the harassment had ultimately hurt her career. She said, “There may have been other factors, but I definitely felt iced out and that my rejection of Harvey had something to do with it.”

5.

In March, 2015, Ambra Battilana Gutierrez, who was once a finalist in the Miss Italy contest, met Harvey Weinstein at a reception for “New York Spring Spectacular,” a show that he was producing at Radio City Music Hall. Weinstein introduced himself to Gutierrez, who was twenty-two, remarking repeatedly that she looked like the actress Mila Kunis.

Following the event, Gutierrez’s modelling agency e-mailed her to say that Weinstein wanted to set up a business meeting as soon as possible. Gutierrez arrived at Weinstein’s office in Tribeca early the next evening with her modelling portfolio. In the office, she sat with Weinstein on a couch to review the portfolio, and he began staring at her breasts, asking if they were real. Gutierrez later told officers of the New York Police Department’s Special Victims Division that Weinstein then lunged at her, groping her breasts and attempting to put a hand up her skirt while she protested. He finally backed off and told her that his assistant would give her tickets to “Finding Neverland,” a Broadway musical that he was producing. He said he would meet her at the show that evening.

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Instead of going to the show, Gutierrez went to the nearest police station and reported the assault. Weinstein telephoned her later that evening, annoyed that she had failed to appear at the show. She picked up the call while sitting with investigators from the Special Victims Division, who listened in and devised a plan: Gutierrez would agree to see the show the following day and then meet with Weinstein. She would wear a wire and attempt to extract a confession or an incriminating statement.

The next day, Gutierrez met Weinstein at the bar of the Tribeca Grand Hotel. A team of undercover officers helped guide her through the interaction. On the recording, which I have heard in full, Weinstein lists actresses whose careers he has helped and offers Gutierrez the services of a dialect coach. Then he presses her to join him in his hotel room while he showers. Gutierrez says no repeatedly; Weinstein persists, and after a while she accedes to his demand to go upstairs. But, standing in the hallway outside his room, she refuses to go farther. In an increasingly tense exchange, he presses her to enter. Gutierrez says, “I don’t want to,” “I want to leave,” and “I want to go downstairs.” She asks him directly why he groped her breasts the day before.

“Oh, please, I’m sorry, just come on in,” Weinstein says. “I’m used to that. Come on. Please.”

“You’re used to that?” Gutierrez asks, sounding incredulous.

“Yes,” Weinstein says. He adds, “I won’t do it again.”

After almost two minutes of back-and-forth in the hallway, Weinstein finally agrees to let her leave.

According to a law-enforcement source, Weinstein, if charged, would most likely have faced a count of sexual abuse in the third degree, a misdemeanor punishable by a maximum of three months in jail. But, as the police investigation proceeded and the allegation was widely reported, details about Gutierrez's past began to appear in the tabloids. In 2010, as a young contestant in the Miss Italy beauty pageant, Gutierrez had attended one of Prime Minister Silvio Berlusconi's infamous "Bunga Bunga" parties. She claimed that she had been unaware of the nature of the party before arriving, and she eventually became a witness in a bribery case against Berlusconi, which is still ongoing. Gossip outlets also reported that Gutierrez, as a teen-ager, had made an allegation of sexual assault against an older Italian businessman but later declined to coöperate with prosecutors.

Two sources close to the police investigation of Weinstein said that they had no reason to doubt Gutierrez's account of the incident. One of them, a police source, said that the department had collected more than enough evidence to prosecute Weinstein. But the other said that Gutierrez's statements about her past complicated the case for the office of the Manhattan District Attorney, Cyrus Vance, Jr. After two weeks of investigation, the D.A.'s office decided not to file charges. The office declined to comment on this story but pointed me to its statement at the time: "This case was taken seriously from the outset, with a thorough investigation conducted by our Sex Crimes Unit. After analyzing the available evidence, including multiple interviews with both parties, a criminal charge is not supported."

"We had the evidence," the police source involved in the operation told me. "It's a case that made me angrier than I thought possible, and I have been on the force a long time."

Gutierrez, when contacted for this story, said that she was unable to discuss the incident. Someone close to the matter told me that, after the D.A.'s office decided not to press charges, Gutierrez, facing Weinstein's legal team, and in return for a payment, signed a highly restrictive nondisclosure agreement with Weinstein, including an affidavit stating that the acts he admits to in the recording never happened.

Weinstein's use of such settlements was reported by the *Times* and confirmed to me by numerous people. A former employee with firsthand knowledge of two settlement negotiations that took place in London in the nineteen-nineties recalled, "It felt like David versus Goliath . . . the guy with all the money and the power flexing his muscle and quashing the allegations and getting rid of them."

6.

The *Times* story disclosed a complaint to the Weinstein Company's office of human resources, filed on behalf of a temporary front-desk assistant named Emily Nestor in December, 2014. Her own account of Weinstein's conduct is being made public here for the first time. Nestor was twenty-five when she started the job and, after finishing law school and starting business school, was considering a career in the movie industry. On her first day in the position, Nestor said, two employees told her that she was Weinstein's "type" physically. When Weinstein arrived at the office, he made comments about her appearance, referring to her as "the pretty girl." He asked how old she was, and then sent all of his assistants out of the room and made her write down her telephone number.

Weinstein told her to meet him for drinks that night. Nestor invented an excuse. When he insisted, she suggested an early-morning coffee the next day, assuming that he wouldn't accept. He did, and told her to meet him at the Peninsula hotel in Beverly Hills, where he was staying. Nestor said that she had talked with friends in the entertainment industry and employees in the company who had warned her about Weinstein's reputation. "I dressed very frumpy," she said.

Nestor told me that the meeting was "the most excruciating and uncomfortable hour of my life." After Weinstein offered her career help, she said, he began to boast about his sexual liaisons with other women, including famous actresses. "He said, 'You know, we could have a lot of fun,'" Nestor recalled. "'I could put you in my London office, and you could work there and you could be my girlfriend.'" She declined. He asked to hold her hand; she said no. In Nestor's account of the exchange, Weinstein said, "Oh, the girls always say no. You know, 'No, no.' And then they have a beer or two and then they're throwing themselves at me." In a tone that Nestor described as "very weirdly proud," Weinstein added "that he'd never had to do anything like Bill Cosby." She assumed that he meant he'd never drugged a woman. "It's just a bizarre thing to be so

proud of,” she said. “That you’ve never had to resort to doing that. It was just so far removed from reality and normal rules of consent.”

“Textbook sexual harassment” was how Nestor described Weinstein’s behavior to me. “It’s a pretty clear case of sexual harassment when your superior, the C.E.O., asks one of their inferiors, a temp, to have sex with them, essentially in exchange for mentorship.” She recalled refusing his advances at least a dozen times. “‘No’ did not mean ‘no’ to him,” she said. “I was very aware of how inappropriate it was. But I felt trapped.”

Throughout the breakfast, she said, Weinstein interrupted their conversation to yell into his cell phone, enraged over a spat that Amy Adams, a star in the Weinstein movie “Big Eyes,” was having in the press. Afterward, Weinstein told Nestor to keep an eye on the news cycle, which he promised would be spun in his favor. Later in the day, there were indeed negative news items about his opponents, and Weinstein stopped by Nestor’s desk to be sure that she’d seen them.

By that point, Nestor recalled, “I was very afraid of him. And I knew how well connected he was. And how if I pissed him off then I could never have a career in that industry.” Still, she told a friend about the incident, and he alerted the company’s office of human resources, which contacted her. (The friend did not respond to a request for comment.) Nestor had a conversation with company officials about the matter but didn’t pursue it further: the officials said that Weinstein would be informed of anything she told them, a practice not uncommon in businesses the size of the Weinstein Company. Several former Weinstein employees told me that the company’s human-resources department was utterly ineffective; one female executive described it as “a place where you went to when you didn’t want anything to get done. That was common knowledge across the board. Because everything funnelled back to Harvey.” She described the department’s typical response to allegations of misconduct as “This is his company. If you don’t like it, you can leave.”

Nestor told me that some people at the company did seem concerned. Irwin Reiter, a senior executive who had worked for Weinstein for almost three decades, sent her a series of messages via LinkedIn. “We view this very seriously and I personally am very sorry your first day was like this,” Reiter wrote. “Also if there are further unwanted advances, please let us know.” Last year, just before the Presidential election, he reached

out again, writing, “All this Trump stuff made me think of you.” He described Nestor’s experience as part of Weinstein’s serial misconduct. “I’ve fought him about mistreatment of women 3 weeks before the incident with you. I even wrote him an email that got me labelled by him as sex police,” he wrote. “The fight I had with him about you was epic. I told him if you were my daughter he would have not made out so well.” (Reiter declined to comment for this article, but his lawyer, Debra Katz, confirmed the authenticity of the messages and said that Reiter had made diligent efforts to raise these issues, to no avail. Katz also noted that Reiter “is eager to coöperate fully with any outside investigation.”)

Though no assault occurred, and Nestor left after completing her temporary placement, she was profoundly affected by the experience. “I was definitely traumatized for a while, in terms of feeling so harassed and frightened,” she said. “It made me feel incredibly discouraged that this could be something that happens on a regular basis. I actually decided not to go into entertainment because of this incident.”

7.

Emme de Caunes, a French actress, met Weinstein in 2010, at a party at the Cannes Film Festival. A few months later, he asked her to a lunch meeting at the Hôtel Ritz, in Paris. In the meeting, Weinstein told de Caunes that he was going to be producing a movie with a prominent director, that he planned to shoot it in France, and that it had a strong female role. It was an adaptation of a book, he said, but he claimed he couldn’t remember the title. “But I’ll give it to you,” Weinstein said, according to de Caunes. “I have it in my room.”

De Caunes replied that she had to leave, since she was already running late for a TV show she was hosting—Eminem was appearing on the show that afternoon, and she hadn’t written her questions yet. Weinstein pleaded with her to retrieve the book with him, and finally she agreed. As they got to his room, she received a telephone call from one of her colleagues, and Weinstein disappeared into a bathroom, leaving the door open. She assumed that he was washing his hands.

“When I hung up the phone, I heard the shower go on in the bathroom,” she said. “I was, like, What the fuck, is he taking a shower?” Weinstein came out, naked and with

an erection. “What are you doing?” she asked. Weinstein demanded that she lie on the bed and told her that many other women had done so before her.

“I was very petrified,” de Caunes said. “But I didn’t want to show him that I was petrified, because I could feel that the more I was freaking out, the more he was excited.” She added, “It was like a hunter with a wild animal. The fear turns him on.” De Caunes told Weinstein that she was leaving, and he panicked. “We haven’t done anything!” she remembered him saying. “It’s like being in a Walt Disney movie!”

De Caunes told me, “I looked at him and I said—it took all my courage, but I said, ‘I’ve always hated Walt Disney movies.’ And then I left. I slammed the door.” She was shaking on the stairs going down to the lobby. A director she was working with on the TV show confirmed that she arrived at the studio distraught and that she recounted what had happened. Weinstein called relentlessly over the next few hours, offering de Caunes gifts and repeating his assertion that nothing had happened.

De Caunes, who was in her early thirties at the time, was already an established actress, but she wondered what would happen to younger and more vulnerable women in the same situation. Over the years, she said, she’s heard similar accounts from friends. “I know that everybody—I mean *everybody*—in Hollywood knows that it’s happening,” de Caunes said. “He’s not even really hiding. I mean, the way he does it, so many people are involved and see what’s happening. But everyone’s too scared to say anything.”

8.

One evening in the early nineties, the actress Rosanna Arquette was supposed to meet Weinstein for dinner at the Beverly Hills Hotel to pick up the script for a new film. At the hotel, Arquette was told to meet Weinstein upstairs, in his room.

Arquette recalled that, when she arrived at the room, Weinstein opened the door wearing a white bathrobe. He said that his neck was sore and that he needed a massage. She told him that she could recommend a good masseuse. “Then he grabbed my hand,” she said. He put it on his neck. When she yanked her hand away, Weinstein grabbed it again and pulled it toward his penis, which was visible and erect. “My heart was really racing. I was in a fight-or-flight moment,” she said. She told Weinstein, “I will never do that.”

Weinstein told her that she was making a huge mistake by rejecting him, and named an actress and a model who he claimed had given in to his sexual overtures and whose careers he said he had advanced as a result. Arquette said she responded, “I’ll never be that girl,” and left.

Arquette said that after she rejected Weinstein her career suffered. In one case, she believes, she lost a role because of it. “He made things very difficult for me for years,” she told me. She did appear in one subsequent Weinstein film—“Pulp Fiction.” Arquette believes that she only got that role because of its small size and Weinstein’s deference to the filmmaker, Quentin Tarantino. (Disputes later arose over her entitlement to payment out of the film’s proceeds.) Arquette said that her silence was the result of Weinstein’s power and reputation for vindictiveness. “He’s going to be working very hard to track people down and silence people,” she explained. “To hurt people. That’s what he does.”

There are other examples of Weinstein’s using the same modus operandi. Jessica Barth, an actress who met him at a Golden Globes party in January, 2011, told me that he invited her to a business meeting at the Peninsula. When she arrived, he asked her over the phone to go up to his room. Weinstein assured her it was “no big deal”—because of his high profile, he simply wanted privacy to “talk career stuff.” In the room, she found that Weinstein had ordered champagne and sushi.

Barth said that, in the conversation that followed, Weinstein alternated between offering to cast her in a film and demanding a naked massage in bed. “So, what would happen if, say, we’re having some champagne and I take my clothes off and you give me a massage?” she recalled him asking. “And I’m, like, ‘That’s not going to happen.’”

When she moved toward the door to leave, Weinstein lashed out, saying that she needed to lose weight “to compete with Mila Kunis,” and then, apparently in an effort to mollify her, promising a meeting with one of his female executives. “He gave me her number, and I walked out and I started bawling,” Barth told me. (Immediately after the incident, she spoke with two people; they confirmed to me that she had described her experience to them at the time.) Barth said that the promised meeting at Weinstein’s office seemed to be purely a formality. “I just knew it was bullshit,” she said. (The executive she met with did not respond to requests for comment.)

Weinstein's behavior deeply affected the day-to-day operations of his companies. Current and former employees described a pattern of meetings and strained complicity that closely matches the accounts of the many women I interviewed. The employees spoke on condition of anonymity because, they said, they feared for their careers in Hollywood and because of provisos in their work contracts.

"There was a large volume of these types of meetings that Harvey would have with aspiring actresses and models," one female executive told me. "He would have them late at night, usually at hotel bars or in hotel rooms. And, in order to make these women feel more comfortable, he would ask a female executive or assistant to start those meetings with him." She was repeatedly asked to join such meetings, she said, but she refused.

The executive said that she was especially disturbed by the involvement of other employees. "It almost felt like the executive or assistant was made to be a honeypot to lure these women in, to make them feel safe," she said. "Then he would dismiss the executive or the assistant, and then these women were alone with him. And that did not feel like it was appropriate behavior or safe behavior."

One former employee told me that she was frequently asked to join for the beginning of meetings that, she said, had in many cases already been moved from day to night and from hotel lobbies to hotel rooms. She said that Weinstein's conduct in the meetings was brazen. During a meeting with a model, the former employee said, he turned to her and demanded, "Tell her how good of a boyfriend I am." She said that when she refused to join one such meeting, Weinstein became enraged. Often, she was asked to keep track of the women, who, in keeping with a practice established by Weinstein's assistants, were all filed under the same label in her phone: F.O.H., which stood for "Friend of Harvey." She added that the pattern of meetings was nearly uninterrupted in her years of working for Weinstein. "I have to say, the behavior did stop for a little bit after the groping thing," she told me, referring to Gutierrez's allegation to the police. "But he couldn't help himself. A few months later, he was back at it."

Two staffers who facilitated these meetings said that they felt morally compromised by them. One male former staffer noted that many of the women seemed "not aware of

the nature of those meetings” and “were definitely scared.” He told me that most of the encounters that he saw seemed consensual, but others gave him pause. He was especially troubled by his memory of one young woman: “You just feel terrible because you could tell this girl, very young, not from our country, was now in a room waiting for him to come up there in the middle of the day, and we were not to bother them.” He said that he was never asked to facilitate these meetings for men.

None of the former executives or assistants I spoke to quit because of the misconduct, but many expressed guilt and regret over not having said or done more. They talked about what they believed to be a culture of silence about sexual assault inside Miramax and the Weinstein Company and across the entertainment industry more broadly.

10.

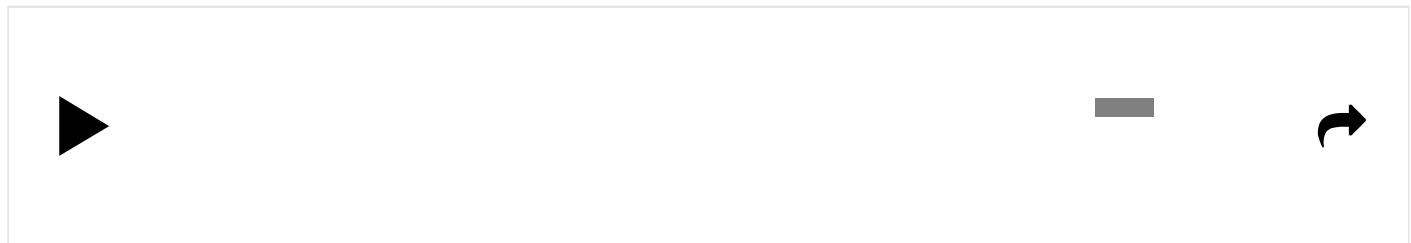
Weinstein and his legal and public-relations teams have conducted a decades-long campaign to suppress these stories. In recent months, that campaign escalated. Weinstein and his associates began calling many of the women in this article. Weinstein asked Argento to meet with a private investigator and give testimony on his behalf. One actress who initially spoke to me on the record later asked that her allegation be removed from this piece. “I’m so sorry,” she wrote. “The legal angle is coming at me and I have no recourse.” Weinstein and his legal team have threatened to sue multiple media outlets, including the *New York Times*.

Several of the former executives and assistants in this story said that they had received calls from Weinstein in which he attempted to determine if they had talked to me or warned them not to. These employees continued to participate in the article partly because they felt that there was a growing culture of accountability, embodied in the relatively recent disclosures about high-profile men such as Cosby and Ailes. “I think a lot of us had thought—and hoped—over the years that it would come out sooner,” the former executive who was aware of the two legal settlements in London told me. “But I think now is the right time, in this current climate, for the truth.”

The female executive who declined inappropriate meetings told me that her lawyer advised her that she could be liable for hundreds of thousands of dollars in damages for violating the nondisclosure agreement attached to her employment contract. “I believe this is more important than keeping a confidentiality agreement,” she said. “The more

of us that can confirm or validate for these women if this did happen, I think it's really important for their justice to do that." She continued, "I wish I could have done more. I wish I could have stopped it. And this is my way of doing that now."

"He's been systematically doing this for a very long time," the former employee who had been made to act as a "honeypot" told me. She said that she often thinks of something Weinstein whispered—to himself, as far as she could tell—after one of his many shouting sprees at the office. It so unnerved her that she pulled out her phone and tapped it into a memo, word for word: "There are things I've done that nobody knows." ♦



This article appears in the print edition of the October 23, 2017, issue.



Ronan Farrow is a contributing writer to The New Yorker and the author of the book "War on Peace: The End of Diplomacy and the Decline of American Influence." His reporting for The New Yorker won the 2018 Pulitzer Prize for public service. [Read more »](#)

Video

Harvey Weinstein's Secret Settlements

Ronan Farrow discusses his investigation of the sexual-assault allegations against Harvey Weinstein.

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EXHIBIT C

(<https://www.pulitzer.org/>)

The 2018 Pulitzer Prize Winner (<https://www.pulitzer.org/prize-winners-by-year/2018>) in
Public Service (<https://www.pulitzer.org/prize-winners-by-category/204>)

For a distinguished example of meritorious public service by a newspaper, magazine or news site through the use of its journalistic resources, including the use of stories, editorials, cartoons, photographs, graphics, videos, databases, multimedia or interactive presentations or other visual material, a gold medal.

'The New York Times, for reporting led by Jodi Kantor and Megan Twohey, and The New Yorker, for reporting by Ronan Farrow'

For explosive, impactful journalism that exposed powerful and wealthy sexual predators, including allegations against one of Hollywood's most influential producers, bringing them to account for long-suppressed allegations of coercion, brutality and victim silencing, thus spurring a worldwide reckoning about sexual abuse of women.



Staff members from The New York Times and The New Yorker (from left: Megan Twohey, Jodi Kantor, Ronan Farrow, 1994 General Nonfiction winner David Remnick, Deidre Foley-Mendelsohn, Michael Schmidt, Emily Steel and 1996 International Reporting winner David Rohde) accept the 2018 Pulitzer Prize for Public Service from Columbia University President Lee Bollinger (far left). (Photo: Eileen Barroso/Columbia University)

WINNING WORK

October 6, 2017

Sexual Misconduct Claims Trail a Hollywood Mogul (New York Times) ()

October 11, 2017

Big-Name Actresses Say They Were Harassed by Weinstein (New York Times) ↗
(<https://www.nytimes.com/2017/10/10/us/gwyneth-paltrow-angelina-jolie-harvey-weinstein.html>)

October 31, 2017

New Accusers Expand Claims Against Weinstein Into the 1970s (New York Times)
()

December 6, 2017

Feeding the Complicity Machine (New York Times) ↗
(<https://www.nytimes.com/interactive/2017/12/05/us/harvey-weinstein-complicity.html>)

April 2, 2017

O'Reilly Thrives as Settlements Add Up (New York Times) ↗
(<https://www.nytimes.com/2017/04/01/business/media/bill-oreilly-sexual-harassment-fox-news.html>)

October 22, 2017

O'Reilly Settled Claim, Then Got a New Fox Deal (New York Times) ()

December 20, 2017

After #MeToo, 'What About Us?' (New York Times) ↗
(<https://www.nytimes.com/interactive/2017/12/19/us/ford-chicago-sexual-harassment.html>)

November 10, 2017

Detailing Lewd Acts, 5 Women Accuse a Comic of Misconduct (New York Times)
()

December 24, 2017

Proudly Edgy, Yet Regressive In Workplace (New York Times) ↗
(<https://www.nytimes.com/2017/12/23/business/media/vice-sexual-harassment.html>)

December 13, 2017

Allegations Against Restaurateur: 'I Was Scared' (New York Times) ↗
(<https://www.nytimes.com/2017/12/12/dining/ken-friedman-sexual-harassment.html>)

October 23, 2017

'The Daily': Bill O'Reilly Goes on the Record ↗
(<https://www.nytimes.com/2017/10/23/podcasts/the-daily/the-daily-bill-oreilly-sexual-harassment.html>)

December 9, 2017

Reader Center: 'You Know, I Never Told You This' (New York Times) ↗
(<https://www.nytimes.com/2017/12/09/reader-center/readers-family-metoo-sexual-assault.html>)

December 28, 2017

The Upshot: We Asked 615 Men About How They Conduct Themselves at Work
(New York Times) ↗
(<https://www.nytimes.com/interactive/2017/12/28/upshot/sexual-harassment-survey-600-men.html>)

April 23, 2017

Editorial: It's Not Just the O'Reilly Problem (New York Times) ()

October 29, 2017

Editorial: Post-Weinstein, What's Different? (New York Times) ()

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Harvey Weinstein Is My Monster, Too (New York Times) ↗
(<https://www.nytimes.com/interactive/2017/12/13/opinion/contributors/salma-hayek-harvey-weinstein.html>)

November 14, 2017

I Believe Juanita (New York Times) ()

October 19, 2017

Speaking Out About Harvey Weinstein (New York Times) ()

October 23, 2017

Abuses of Power (New Yorker) ()

October 27, 2017

Weighing the Costs of Speaking Out About Harvey Weinstein (New Yorker) ↗
(<https://www.newyorker.com/news/news-desk/weighing-the-costs-of-speaking-out-about-harvey-weinstein>)

November 6, 2017

Harvey Weinstein's Army of Spies (New Yorker) ↗
(<https://www.newyorker.com/news/news-desk/harvey-weinsteins-army-of-spies>)

November 21, 2017

Harvey Weinstein's Secret Settlements (New Yorker) ↗
(<https://www.newyorker.com/news/news-desk/harvey-weinsteins-secret-settlements>)

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Joanne Lipman

Author and former Editor-in-Chief, *USA Today*

Kevin Merida

Senior Vice President and Editor-in-Chief, The Undefeated

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Former Executive Editor, New England Center for Investigative Reporting

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Editor, *The News & Observer*, Raleigh, NC

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2016 (<https://www.pulitzer.org/prize-winners-by-year/2016>)

Associated Press (<https://www.pulitzer.org/winners/associated-press>)

2015 (<https://www.pulitzer.org/prize-winners-by-year/2015>)

The Post and Courier, Charleston, SC (<https://www.pulitzer.org/winners/post-and-courier>)

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John Archibald of Alabama Media Group, Birmingham, Ala.
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National Reporting (<https://www.pulitzer.org/prize-winners-by-category/209>)

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EXHIBIT D

Harvey Weinstein scandal: A complete list of the 87 accusers

usatoday.com/story/life/people/2017/10/27/weinstein-scandal-complete-list-accusers/804663001

Sara M Moniuszko and Cara Kelly, USA TODAY Published 11:27 a.m. ET Oct. 27, 2017 | Updated 4:51 p.m. ET June 1, 2018

Harvey Weinstein was once at the very top of Hollywood. As accusations of his sexual predation came to light, it didn't just trigger his downfall. It ushered in a tidal wave of exposure of sexual impropriety in the film industry. USA TODAY

(Photo: N. Prommer, G. Horcajuelo, S. Nogier, A. Gombert, Peter Fole, epa)



Since The New York Times and The New Yorker published bombshell reports last fall detailing decades of alleged sexual harassment and assault by producer Harvey Weinstein, dozens of women have come forward with similar claims against the movie mogul.

Eighty-five women have accused Weinstein of inappropriate to criminal behavior ranging from requests for massages to intimidating sexual advances to rape. Weinstein has denied the allegations.

"Any allegations of non-consensual sex are unequivocally denied by Mr. Weinstein," Weinstein spokeswoman Holly Baird told USA TODAY in a statement.

On Thursday, multiple news outlets reported that Weinstein would turn himself in to the New York Police Department and Manhattan District Attorney's office on Friday.

Here is a complete (and developing) list of his accusers:

1. Amber Anderson, an actress known for *The Riot Club*, posted to Instagram on Oct. 16 that Weinstein "coerced" her into a private meeting. "He behaved inappropriately and propositioned a 'personal' relationship to further my career whilst bragging about other actresses he had 'helped' in a similar way," she wrote. "He tried to take my hand and put it in his lap which is when I managed to leave the room."

2. Lysette Anthony, an English model and actress of *Husbands and Wives*, told 'The Sunday Times' on Oct. 15 that Weinstein raped her in her home in the late 1980s.

3. Asia Argento, an Italian actress, model and director, told *The New Yorker* that in 1997 when she was 21, Weinstein asked for a massage and forcibly performed oral sex on her at a hotel in France.

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4. **Rosanna Arquette**, 58, told *The New Yorker* she rebuffed an early 1990s advance from Weinstein, saying he asked for a massage while wearing only a bathrobe. She says the producer told her she was making a “big mistake” by rejecting him and claims he has made things “very difficult for (her) for years.” Arquette is an actress, director and producer known for her work in *Pulp Fiction* and *The Executioner's Song*.

5. **Jessica Barth**, the 37-year-old actress from the *Ted* films, told *The New Yorker* Weinstein invited her to a business meeting at his Beverly Hills hotel room after the 2011 Golden Globes. Barth later recalls he had champagne waiting, and alternated between offering to cast her in a film and demanding a naked massage. She claims that when she moved toward the door to leave, Weinstein lashed out, saying that she needs to lose weight “to compete with Mila Kunis.”

6. **Ambra Battilana Gutierrez**, an Italian model, can be heard being pressured by Weinstein in audiotapes from a New York Police Department sting in 2015. In the tapes, he seemingly admits to groping the model on the previous day. Weinstein reaches a settlement with Gutierrez, according to the *Times*.

More: [Morgan Freeman accused of sexual harassment and inappropriate behavior](#)

Related: [Ashley Judd says 'tipping point' on sexual harassment is here](#)

More: [Harvey Weinstein accuser: He sexually assaulted me, later sought threesome](#)

7. **Kate Beckinsale**, 44, posted to Instagram on Oct. 12 accusing Weinstein of offering her alcohol during their first meeting when she was just 17. “I assumed it would be in a conference room which was very common,” she wrote. “When I arrived, reception told me to go to his room. He opened the door in his bathrobe.” Beckinsale is an English actress who has starred in *Much Ado About Nothing* and *Pearl Harbor*.

8. **Juls Bindu**, a massage therapist, alleged in a *20/20* interview that Weinstein masturbated in front of her while he groped her chest in 2010. She was 29 years-old at the time and says that Weinstein discussed a possible book deal with her before the incident happened.

9. **Zoe Brock**, a New Zealand model, told *The Guardian* and wrote in a 2,700-word post on Medium that Weinstein cornered her in a hotel room during the Cannes Film Festival in 1997, asking her for a massage while he was naked. The model, who was 23 at the time, says she locked herself in a bathroom to escape.

10. **Cynthia Burr**, now 62, told the *New York Times* in an interview published Oct. 30 that as a young actress in New York, she met Weinstein in a hotel lobby and he unzipped his fly and forced her to perform oral sex on him in a hallway. “It was just him and me alone,” she said. “I was fearful I didn’t have the wherewithal to get away.”

11. **Liza Campbell**, a Scottish artist and writer, told *The Sunday Times* that Weinstein invited her to take a bath with him after meeting with him in his hotel room in 1995.

12. **Marisa Coughlan**, a 43-year-old actress who starred in *Super Troopers*, told *The Hollywood Reporter* on Oct. 18 that Weinstein asked her to meet at a hotel in 1999 to discuss a film role, alleging that, once she was there, he requested a massage from her.

13. **Hope Exiner d'Amore** worked for Weinstein's concert promotion company, Harvey and Corky Productions, in the late '70s, she told the *Times*. On a business trip to New York City, she says Weinstein claimed there was a mistake at the hotel and only one room was available. In the middle of the night, Exiner d'Amore, now 62, says Weinstein forcibly performed oral sex and intercourse on her.

14. **Florence Darel**, a 49-year-old French actress, told *People* on Oct. 12 that Weinstein pursued her in the mid '90s and then propositioned her in a hotel room while his wife at the time, Eve Chilton, was in the room next door. Darcel starred in *The Stolen Children* and *Uranus*.

15. **Emma de Caunes**, a French actress, told *The New Yorker* that Weinstein invited her to his hotel room in Cannes in 2010. While she takes a call from a friend, he goes into his bathroom, where she hears the shower being turned on. She later says that he came out with an erection and demanded she lie on the bed. "It was like a hunter with a wild animal," she said. "The fear turns him on." De Caunes starred in *The Science of Sleep* and *Mr. Bean's Holiday*.

16. **Juliana De Paula**, a former model, told the *Los Angeles Times* that Weinstein groped her and forced her to kiss other models in New York a decade ago. She added that when she tried to leave, he chased her around naked, and she had to fight him off with broken glass.

17. **Cara Delevingne**, the 25-year-old English actress and model shared in an Instagram post on Oct. 11 and in a statement to *New York Magazine* and *Huffington Post* that the movie producer attempted to kiss her in a hotel room. "As soon as we were alone he began to brag about all the actresses he had slept with and how he had made their careers and spoke about other inappropriate things of a sexual nature," she wrote. Delevingne stars in *Valerian* and *Tulip Fever*.

More: [Cara Delevingne, Angelina Jolie and Gwyneth Paltrow say Weinstein harassed them, too](#)

18. **Sophie Dix**, an English actress known for her role in *The Advocate*, told *The Guardian* on Oct. 13 that she was sexually assaulted by Weinstein in the Savoy hotel in London in the '90s.

19. **Lacey Dorn**, a recently-graduated documentary filmmaker, told the *Times* she ran into Weinstein at a Halloween party at the Gramercy Park Hotel in 2011, where he grabbed between her legs, touching her buttocks and crotch through her clothes.

20. **Dawn Dunning**, a waitress and aspiring actress, told the *Times* that in 2003 Weinstein lured her to his hotel, where he waited in a bathrobe in front of what he said were contracts for his next three films -- but she could only sign them on a condition: She would have to have three-way sex with him. Dunning laughed, assuming he was joking. Weinstein grew angry, she recalls. "You'll never make it in this business," she said he told her. "This is how the business works." Dunning fled.

21. **Lisa Esco**, the 32-year-old *S.W.A.T.* actress and director, told the *Washington Post* and later *People* that Weinstein propositioned her with a kiss, and when she brushed him off, he threatened her career.

22. **Alice Evans**, a British actress, wrote in *The Telegraph* on Oct. 14 that Weinstein tried to touch and kiss her during the 2002 Cannes Film Festival. In the essay, she also claims that her rejection of Weinstein negatively impacted her and her husband's careers. Evans starred in *The Christmas Card* and *The Vampire Diaries*.

23. **Lucia Evans** (formally Lucia Stoller), told *The New Yorker* that she was approached by Weinstein at a New York club and invited to a meeting in 2004. Upon arrival, she was escorted to an office, where he both flattered her and recommended she lose weight to be on his reality show, *Project Runway*. "After that is when he assaulted me," Evans told the newspaper. "He forced me to perform oral sex on him. I said, over and over, 'I don't want to do this, stop, don't.' " In the end, she said, "He's a big guy. He overpowered me."

24. **Angie Everhart**, an actress (*Take Me Home Tonight*) and former model came forward on the KLOS morning show alleging Weinstein masturbated in front of her while on a boat during the Venice Film Festival. The former model and actress claims Weinstein told her, "You're a really nice girl, you shouldn't tell anybody about this."

25. **Claire Forlani**, an English actress (*Meet Joe Black* and *Boys and Girls*), took to Twitter on Oct. 12 to claim she dodged five different advances from Weinstein over the years.

26. **Romola Garai**, an English actress, told *The Guardian* that in 2004 during the audition process for *Havana Nights*, she was told to arrive at Weinstein's hotel room, alone. "He answered the door in his bathrobe," she said. "I was only 18. I felt violated by it, it has stayed very clearly in my memory."

Three police departments have opened investigations into accusations against the Hollywood producer. Video provided by Newsy Newslook

27. **Louisette Geiss**, a former actress and screenwriter, said at a press conference on Oct. 10 that at the Sundance Film Festival in 2008, Weinstein invited her to his room to discuss her script, but after about 30 minutes, he returned from the bathroom in nothing but a robe with the front open. Weinstein proceeded to get in the bathtub and "just kept asking me to watch him masturbate," she said. Geiss says she moved to leave his hotel room, and Weinstein trailed her to the door, promising to introduce her to his brother, Bob, greenlight her script and give her a three-picture deal. But she had to watch him masturbate first.

28. **Louise Godbold**, a co-executive director of the non-profit Echo Parenting & Education, wrote in a blog post published on Oct. 9 that in the early '90s she was also a victim of Weinstein. She describes being trapped in an empty meeting room, being propositioned for a massage and being touched on her shoulders.

29. **Judith Godreche.** At 24-years-old, the French actress (*The Man in the Iron Mask*) was invited to breakfast with Weinstein during the Cannes Film Festival in 1996, she tells the *Times*. Afterward, the mogul, who had just acquired her film *Ridicule*, allegedly lured her to his room, promising to talk about planning an Oscar campaign. Then he asked to give her a massage. She said no. "The next thing I know, he's pressing against me and pulling off my sweater," she recalls. She pulls away and leaves the suite.

30. **Trish Goff**, a former model and actress, told the *Times* that Weinstein allegedly groped her during a lunch meeting in 2003. "When we finally stood up to go, he really started groping me, grabbing my breasts, grabbing my face and trying to kiss me," she said.

31. **Heather Graham**, an actress known for her role in *The Hangover* films, wrote an essay for *Variety* on Oct. 10 describing a time in the early 2000s when Weinstein allegedly insinuated that she would need to have sex with him in order to get a role in one of his upcoming films. She was never hired for one of his films.

32. **Eva Green**, an actress known for *Casino Royale* and Weinstein Company's *Sin City*, told *Variety* that she had to push Weinstein off of her during a business meeting in Paris.

33. **Larissa Gomes**, an actress known for *Saw VI*, told the *Los Angeles Times* that Weinstein asked her to bare her chest while working on the Toronto set of the Miramax-produced film *Get Over It* about 17 years ago. In a class-action lawsuit filed on June 1, she detailed how Weinstein tried to kiss her, forcibly massaged her shoulders and threatened her, saying "Ashley Judd had no problem" sleeping with him. She was 21 at the time.

34. **Mimi Haleyi**, a former production assistant, said she met Weinstein at the 2004 premiere of *The Aviator*, and again at the Cannes Film Festival in 2006, where she offered to help on his productions in New York. He told her to come by his hotel. When she did, he suggested she massage him. "I felt the meeting was going nowhere and I left," Haleyi said with lawyer Gloria Allred at a press conference Oct. 24. Later in New York, Weinstein orally forced himself on her while she was on her period, she said.

35. **Daryl Hannah**, an actress known for *Steel Magnolias* and the *Kill Bill* films, told *The New Yorker* on Oct. 27 that Weinstein sexually harassed her on two different occasions in the past decade.

36. **Salma Hayek** accused Weinstein of sexually harassing her while working together on the 2002 film *Frida*, in a column for *The New York Times* Dec. 13. She claims the list of unwanted advances from the producer included showers, oral sex, massages and more. She also alleges he threatened to kill her following one of her refusals, and verbally insulted her on set.

37. **Lena Headey**, 44, who plays Cersei on *Game of Thrones*, shared a series of tweets on Oct. 17 describing an incident in 2005 involving "some suggestive comment, a gesture" from Weinstein. Years later, she said she also experienced him asking her personal questions about her love life

before asking her up to his hotel room.

More: [Harvey Weinstein scandal: Film academy can't be 'inquisitorial court,' new memo says](#)

38. **Natasha Henstridge**, 43, appeared on *Megyn Kelly Today* on Nov. 15 detailing an accusation of sexual assault against producer Brett Ratner. But she also accused Weinstein of inappropriate behavior. Henstridge says she was at a meeting with Weinstein in a Sundance hotel when "suddenly, it became not anything about the job that he was trying to offer me or put me up for anymore and it became all about flirtation," she told Kelly, adding he "came on to me repeatedly." While the actress says she was able "to avoid an actual physical attack" by Weinstein she alleged "He pleasured himself in front of me."

39. **Lauren Holly** said on the Canadian talk show *The Social* on Oct. 16 that Weinstein, who she met while working on the 1996 film *Beautiful Girls*, acted inappropriately towards her during a meeting in his hotel room. After what appeared to be a normal business meeting, she claims Weinstein left the room before returning in a bathrobe and asking her to follow him into the bedroom. She says he then dropped the robe and took a shower. Once out of the shower he approached her naked before she fled the room.

40. **Paz de la Huerta**, 33, a model and actress best known for roles in *Boardwalk Empire* and *A Walk to Remember*, accused Weinstein of raping her on two separate occasions. In an interview with *Vanity Fair* published Nov. 2, the actress said the first alleged assault happened in October 2010 when she was 26; the second in December 2010. "I laid there feeling sick," de la Huerta told *Vanity Fair*. "He looked at me and said, 'I'll put you in a play.' He left and I never heard from him again." Weinstein spokeswoman Holly Baird told USA TODAY in a statement, "Any allegations of non-consensual sex are unequivocally denied by Mr. Weinstein."

41. **Dominique Huett**, 35, a New York-based actress, filed a lawsuit in Los Angeles Oct. 24 against The Weinstein Company, alleging that Harvey Weinstein pressured her into sex at the Peninsula Hotel in Beverly Hills in 2010 and that his company knew about multiple allegations of sexual misconduct against him dating back to the '90s.

42. **Angelina Jolie**, a 42-year-old actress, filmmaker and humanitarian, told the *Times* that during the release of *Playing By Heart*, she rejected advances by Weinstein in a hotel room. She was 23 at the time. "I had a bad experience with Harvey Weinstein in my youth, and as a result, chose never to work with him again and warn others when they did," Jolie explained in an email to the newspaper.

43. **Ashley Judd**, 49, told the *Times* that during a 1997 breakfast meeting at Weinstein's hotel room in Beverly Hills, the producer propositioned her, saying he could give her a massage or she could watch him shower. She was starring in Miramax's *Kiss the Girls* at the time.

More: ['NYT': Producer Harvey Weinstein has a 30-year history of sexual harassment](#)

44. **Katherine Kendall**, a 48-year-old actress from *Swingers*, told the *Times* that Weinstein convinced her to stop by his apartment in 1993 when she was 23 years old. Once there, he came out of his bathroom in a robe, asking for a massage. She refused; he left the room and returned nude, she says. "He literally chased me," she told the newspaper. "He wouldn't let me pass him to get to the door."

45. **Minka Kelly**, a 37-year-old actress from *Friday Night Lights*, took to Instagram on Oct. 13, describing how Weinstein allegedly propositioned her to be his girlfriend at a meeting.

46. **Heather Kerr**, a 56-year-old former actress, read a statement on Oct. 20 at a press conference with attorney Gloria Allred, describing a 1989 encounter with Weinstein where he exposed himself to her and told her she had to sleep with him and other Hollywood producers in order to succeed in the industry.

47. **Mia Kirshner**, a 42-year-old Canadian actress (*The L Word*), wrote an op-ed for *The Globe and Mail* on Oct. 13 that alleged Weinstein harassed her in a hotel room.

48. **Myleene Klass**, a British singer-turned-TV-host, was propositioned by Weinstein during a film festival lunch at Cannes in 2010, according to UK's *The Sun*. The report claims she immediately declined his offer, telling him to "(expletive) off," and left the meeting "disgusted and angry." She was 32 at the time.

49. **Liz Kouri**, an actress, told USA TODAY Weinstein put his fingers inside her and moved her hand to help him masturbate after they met at an opening party for an off-Broadway show in 1999. "I couldn't react," she said. "I didn't want to make him mad... I didn't want to ruin any chances that I might have had at all to audition for him. Or my career."

50. **Ivana Lowell**, a former Miramax employee and former girlfriend of Bob Weinstein, wrote in her 2010 memoir *Why Not Say What Happened?* that Harvey Weinstein showed up at her apartment, lay naked on her bed and asked for a massage. In an article for *The Daily Mail*, she recounted her experience with the movie mogul and revealed he threatened to sue her after the memoir was released.

51. **Laura Madden**, a London-based assistant, told the *Times* that Weinstein asked her for massages at hotels in Dublin and London in 1991, adding he had a way of making anyone who objected feel like an outlier. "It was so manipulative," she recalled, two decades after the original incident.

52. **Natassia Malthe**, 43, said Weinstein barged into her London hotel room and raped her in 2008 after she met him at the BAFTA Awards. After the rape, he masturbated in front of her, the Norwegian-born actress said in her statement at a press conference with attorney Gloria Allred on Oct. 25.

53. **Brit Marling**, the *OA* actress/writer shared in an essay for *The Atlantic* that Weinstein pulled the hotel room-massage act on her in 2014. "I, too, was asked if I wanted a massage, champagne, strawberries. I, too, sat in that chair paralyzed by mounting fear when he suggested we shower together," she wrote.

More: Harvey Weinstein scandal: Total accusers pass 50 women

54. **Sarah Ann Masse**, a writer and actress (*Awkward Exes*), told *Variety* on Oct. 11 that Weinstein hugged her in his underwear and told her he loved her during an interview for a nanny job in 2008.

55. **Ashley Matthau**, a dancer who worked on *Dirty Dancing: Havana Nights*, which was produced by Weinstein's company, told the *Times* that Weinstein began hitting on her on set. He asked her to get in his car and took her to a hotel room, where she says she refused his sexual advances but he pushed her onto the bed and fondled her breasts before stripping, straddling her and masturbating on top of her. She hired an attorney from Gloria Allred's firm, but says Weinstein and his lawyer threatened to drag her through the mud if she went public, so she took a settlement.

56. **Rose McGowan**, 44-year-old *Charmed* actress, reached a previously undisclosed settlement with Weinstein in 2007 after an episode in a hotel room during the Sundance Film Festival, the *Times* reported in early October. In 2016, she tweeted that she was raped by a studio head in 2007, but didn't identify Weinstein at the time.

57. **Katya Mtsitouridze**, a Russian TV host, told *The Hollywood Reporter* on Oct. 19 that she was harassed by Weinstein, alleging he arranged a private meeting in 2004 during the Venice Film Festival where he greeted her in a bathrobe and suggested she give him a massage.

58. **Emily Nestor**, who had worked just one day as a temporary employee for the Weinstein Company in 2014, was invited to a hotel room and propositioned by Weinstein, according to the *Times* and *New Yorker*.

59. **Connie Nielsen**, a 52-year-old Danish actress (*The Devil's Advocate*), wrote a guest column for *Variety* on Oct. 24, adding her name to the list of women allegedly harassed by Weinstein, who produced her 2005 film *The Great Raid*. The actress claims the producer put his hand on her thigh during the opening night of the film.

60. **Kadian Noble**, 31, filed a civil suit on Nov. 27 in New York alleging that Harvey Weinstein summoned her to his hotel room at Cannes Film Festival in 2014 to talk about a role. He began massaging her shoulders and told the British actress to "relax." According to her civil suit, which alleges Weinstein and his company engaged in sex trafficking, the producer groped her, pulled her into a bathroom, and forced her to fondle him.

61. **Lupita Nyong'o**, a 34-year-old Academy Award-winning actress, penned a lengthy column in the *Times* on Oct. 19 recounting her experience with Weinstein. "Harvey led me into a bedroom — his bedroom — and announced that he wanted to give me a massage. I thought he was joking at first. He was not," Nyong'o wrote. She said Weinstein's advances continued later during a dinner in New York. Weinstein issued a written response via *Variety* the following day. "Mr. Weinstein has a different recollection of the events, but believes Lupita is a brilliant actress and a major force for the industry," the statement read.

62. **Gwyneth Paltrow**, 45, told the *Times* that before shooting *Emma* when she was 22, Weinstein summoned her to his suite at the Peninsula Beverly Hills hotel for a work meeting which ended with Weinstein placing his hands on her and suggesting they head to the bedroom for massages. "I was a kid, I was signed up, I was petrified," she said.

63. **Samantha Panagrosso**, a model, told *Variety* that Weinstein made unwanted sexual advances toward her during the Cannes Film Festival in 2003 while on a friend's yacht, and groped her underwater at a nearby hotel pool.

64. **Zelda Perkins**, a former assistant to Weinstein, broke her NDA for an interview with the *Financial Times*, saying she confronted the producer after being subjected to harassment on a near daily basis during the time she worked for him. At the Venice Film Festival in 1998, she told the *Times*, he assaulted a colleague, and the women entered a settlement agreement for approximately \$330,000.

65. **Vu Thu Phuong**, a Vietnamese actress, came forward in a Facebook post on Oct. 12 claiming Weinstein made sexual advances towards her during a hotel room meeting in 2008, attempting to teach her how to perform in a sex scene, *Vulture* and *The Huffington Post* reported.

66. **Tomi-Ann Roberts**. In 1984, the then 20-year-old college junior and waitress was hoping to start an acting career. She says Weinstein, a customer, sent her scripts and asked her to meet to discuss the film. When she arrived, he was nude in the bathtub, she told *The New York Times*. According to the newspaper's account, he suggested she get naked as part of her audition because the character she might play would have a topless scene. Roberts recalls apologizing, excusing herself as prudish, and leaving.

67. **Lisa Rose**, a then-aspiring actress who worked for Miramax in London when she was 22, told BBC News that Weinstein harassed her in 1988 at the Savoy hotel. She claims Weinstein asked her for a massage and, when she declined, said "nasty things" to her. She later resigned.

68. **Erika Rosenbaum**, a Canadian actress (*The Last Kiss*), said in an interview with CBC (Canadian Broadcasting Corporation) that Weinstein held her by the back of her neck and masturbated in front of her in a hotel room during the Toronto International Film Festival in the mid-2000s.

69. **Melissa Sagemiller** told *The Huffington Post* that Weinstein harassed her when she was 24-years-old while she worked on *Get Over It*, which was distributed by Weinstein's Miramax. During a meeting in his hotel room, the producer allegedly refused to let her leave until she kissed him.

70. **Annabella Sciorra**, an actress known for her work in *Reversal of Fortune* and *The Hand That Rocks the Cradle*, told *The New Yorker* on Oct. 27 that Weinstein violently raped her in the early 1990s and repeatedly sexually harassed her over the next several years.

71. **Léa Seydoux**, 32-year-old French actress of *Blue is the Warmest Colour*, wrote an op-ed for *The Guardian* on Oct. 11 describing an interaction she had with Weinstein, which involved him inviting her to his hotel room for a drink and later lunging at her and attempting to kiss her.

72. **Lauren Sivan**, a New York TV reporter, says she was cornered by Weinstein in the kitchen of a restaurant in which he is an investor in 2007, according to *The Huffington Post*. When she avoids his kiss, he reportedly tells her to "stand there and shut up" while he masturbates and ejaculates into a nearby potted plant.

73. **Chelsea Skidmore**, an actress known for *Leah & Chelsea Have a Sleepover*, told the *Washington Post* that Weinstein asked her for a massage after a meeting at the Peninsula Hotel in 2013. After declining, she claims he masturbated in front of her.

74. **Mira Sorvino**, 50, told *The New Yorker* that while promoting *Mighty Aphrodite* at the 1995 Toronto International Film Festival, Weinstein "started massaging my shoulders, which made me very uncomfortable, and then tried to get more physical, sort of chasing me around." Weeks later, she says he evaded her doorman and showed up at the door of her New York apartment, but was able to scare him off on both occasions.

75. **Tara Subkoff**, a 44-year-old actress (*The Cell*), told *Variety* that Weinstein sexually harassed her in the 1990s, recounting a time when he "grabbed" her to sit on his lap. "I could feel that he had an erection," she recalled.

76. **Paula Wachowiak**, 62, told *The Buffalo News* that Weinstein exposed himself to her when she was a 24-year-old production assistant on his first film, *The Burning*, in 1980. Wachowiak says she left the room in tears. Later, she says, he asked, "Was seeing me naked the highlight of your internship?"

77. **Paula Williams**, a then-model trying to break into the movie business, told [ABC 20/20](#) Weinstein invited her to a party in 1990 when she was 20. Once she arrived, she said he was alone and started touching her neck before quickly exposing himself to her. She says she escaped before anything else happened.

78. **Sean Young**, a 57-year-old actress (*Blade Runner*), said Weinstein exposed himself to her while on the set of the 1992 Miramax film *Love Crimes*, during an interview Oct. 20 on KLBJ's Dudley and Bob With Matt Show Daily Podcast. She says she "personally experienced him pulling his you-know-what out of his pants."

79. **Caitlin Dulany** told *The Wrap* that in 1996 Weinstein used his influence to talk his way into her apartment, where he stripped down naked. In June, a lawsuit revealed he allegedly also forcibly performed oral sex on her during the Cannes Film Festival the same year.

80. **Melissa Thompson**, a Columbia MBA grad, joined the lawsuit on June 1. She says in 2011, while pitching him on her technology startup he put his hands up her skirt, and later, under the guise of a business meeting, led her to a hotel suite above his office and raped her. Years later, she alleges she was tricked by Weinstein's lawyer, Benjamin Brafman, into sharing evidence of her assault, believing he was representing victims of the mogul.

Anonymous accusers:

81. An unidentified woman, who worked for Weinstein and told the *New Yorker* she was too afraid to use her name for fear of legal retaliation, said Weinstein brought her to a hotel room under professional pretext, then changed into a bathrobe and forced himself on her sexually.

82. An unnamed 38-year-old Italian actress whose accusation that Weinstein raped her in 2013 is now being investigated by Los Angeles police.

83. A former Miramax employee going by the alias Sarah Smith told *The Daily Mail* that Weinstein raped her in the basement of his London office in 1992. "He grabbed me and he was so big and powerful. He just ripped my clothes away and pushed me, threw me down," she said.

84. The *Washington Post* reported an account from 1984 on Oct. 14, in which a young crew member on Weinstein's film *Playing for Keeps* was reportedly asked to visit Weinstein's hotel room where he attempted to perform oral sex on her.

85. An unnamed Canadian actress from Toronto is launching a lawsuit against Weinstein, alleging the movie mogul sexually assaulted her while filming a movie in Toronto in 2000, according to the Toronto Sun and CBC News. Once alone with the actress in his suite at the Sutton Place Hotel, Weinstein allegedly asked her if she liked massages, exposed himself to her and performed oral sex on her without her consent. Once she was able to free herself, she left the hotel and told her agent. The lawsuit claims the Jane Doe returned to Weinstein's suite after he insisted there had been a misunderstanding, and once back in his room, "he threw his weight onto her and tried to stick his tongue down her throat." She was in her 20s at the time.

86. An unnamed actress filed a lawsuit against the mogul in Beverly Hills on Nov. 14, according to the *Associated Press*. Known only as "Jane Doe," the woman alleges Weinstein held her against her will while he masturbated in a Beverly Hills hotel room in 2015. A year later, she says, he threw her on his bed in a hotel room, started performing oral sex on her and then held her down while he masturbated on her. The suit says the woman was able to break free and flee the room.

87. An unnamed former employee filed the first civil claim in the U.K. on Nov. 23 against Weinstein and the Weinstein Co. for a series of sexual assaults. Her lawyer, Jill Greenfield, said the woman has not filed a complaint with police about the alleged incidents that occurred after the year 2000 but believes she will do so.

If you have ever experienced or witnessed sexual misconduct while working in the entertainment industry, we'd like to hear from you. Send us a secure tip using the instructions at newstips.usatoday.com.



43 Photos

Harvey Weinstein scandal: Accusers step forward

[Next Slide](#)

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EXHIBIT E

October 12, 2018

VIA HAND DELIVERY AND FACSMILE

Hon. James Burke
New York County Supreme Court
100 Centre Street
New York, NY 10013
(646) 386-4665

Re: People v. Harvey Weinstein, Indictment No. 02335-2018

Dear Justice Burke:

I write on behalf of American Broadcast Company, Inc. (“ABC”) regarding the hearing held before this Court on October 11, 2018 at which this Court dismissed Count 6 against Harvey Weinstein at the People’s request.¹

At the hearing, several sealed documents were referenced by counsel, including at least two motions to dismiss and the September 12 letter. When the September 12 letter was subsequently unsealed, ABC learned that it referred to additional, sealed documents, including documents related to the conduct of a lead police investigator in the case, that have been withheld from the public and press. ABC respectfully requests that the (1) motions made under seal, and (2) documents referenced in the September 12 letter promptly be made available to the press and the public. ABC further requests that all filings in this action be listed on the public docket, which at present contains no entries for any motions made to this Court.

The right of access to court proceedings and records is protected by the First and Fourteenth Amendments to the United States Constitution and Article I, Section 8 of the New York State Constitution. *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1 (1986) (“*Press-Enterprise II*”); *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596 (1982); *Associated Press v. Bell*, 70 N.Y.2d 32, 517 N.Y.S.2d 444 (1987). The constitutional presumption in favor of access requires “the most compelling circumstances” to justify any restriction upon that right. *In re Application of Nat'l B'casting Co.*, 635 F.2d 945, 952 (2d Cir. 1980). See also *Danco Labs.*,

¹ See ABC News, *Prosecutors drop sex assault charge against Harvey Weinstein after contradictions arise in accuser Lucia Evans’ Account*, October 11, 2018, available at <https://abcnews.go.com/US/weinstein-case-heads-back-court-amid-potential-setbacks/story?id=58422913>; The Associated Press, *New York City Prosecutors drop part of Harvey Weinstein Case*, October 11, 2018, available at <https://www.apnews.com/472366b4c7c74178bde962f85416fac6>.



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Ltd. v. Chemical Works of Gedeon Richter, Ltd., 274 A.D.2d 1, 8, 711 N.Y.S.2d 419, 425 (1st Dep’t 2000) (“Especially when issues of major public importance are involved, the interests of the public as well as the press in access to court records ‘weigh heavily’ in favor of release”) (citation omitted). Specifically, to protect the presumption of openness, First Amendment jurisprudence prohibits sealing court records without on-the-record factual findings demonstrating that (1) nondisclosure is essential to preserve a compelling interest; (2) there is no less restrictive alternative to sealing that will protect the demonstrated compelling interest; (3) the requested sealing will be effective in protecting the specific compelling interest at issue; and (4) the order limiting public access is drawn as narrowly as possible. *Press-Enterprise II*, 478 U.S. 1; *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110 (2d Cir. 2006); *Danco*, 274 A.D.2d 1, 711 N.Y.S.2d 419; *Doe v. New York Univ.*, 6 Misc. 3d 866, 866, 786 N.Y.S.2d 892, 892 (Sup. Ct. N.Y. Cty. 2004).

The right of access to court proceedings and records “is also firmly grounded in common-law principles.” *Danco*, 274 A.D.2d at 6, 711 N.Y.S.2d at 423 (citing *Nixon v. Warner Communications, Inc.* 435 U.S. 589, 597 (1978)). See also *People v. Burton*, 189 A.D.2d 532, 536-37, 597 N.Y.S.2d 488, 491-92 (3d Dep’t 1993) (“a common-law presumption” favors public access to court records); *United States v. Myers*, 635 F.2d 945, 949 (2d Cir. 1980) (“the common law right to inspect and copy judicial records is beyond dispute”) (citation omitted). Like the constitutional presumption in favor of access, the common law presumption may be overcome only by an on-the-record showing that “the public’s right of access is outweighed by competing interests. Specificity of proof and of judicial findings are required, and a trial court must also consider less drastic alternatives to sealing the records[.]” *Burton*, 189 A.D.2d at 536, 597 N.Y.S.2d at 491. Critically, where “the interest favoring non-access is a criminal defendant’s right to a fair trial, sealing may only be ordered upon a showing of a reasonable likelihood that the publicity from the disclosure of the records would render it impossible to obtain a fair and impartial jury.” *Id.* See also *Associated Press*, 70 N.Y.2d at 38, 517 N.Y.S.2d at 447 (in context of suppression hearings, “hypothetical risk of prejudice or taint cannot justify categorical denial of public access” to such hearings because “the important interests of *both* the accused and the public can be accommodated” in other ways).

The public’s right of access extends to the court’s docket, which “provide[s] a kind of index to judicial proceedings and documents,” that “endow[s] the public and press with the capacity to exercise their rights guaranteed by the First Amendment.” *Hartford Courant Co. v. Pellegrino*, 380 F.3d 83, 93 (2d Cir. 2004). Here, where the public docket remains empty, the press has been unable to properly exercise its rights concerning arguably the most important pending criminal case.

The public’s right of access also extends to the physical evidence and other exhibits upon which a case is decided, including dispositive motions. See, e.g., *United States v. Myers*, *supra*; *People v. Burton*, 189 A.D.2d at 535; *Danco*, 274 A.D.2d at 7; *Matter of Glens Falls*

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Newspapers, Inc. v. Berke, 206 A.D.2d 668, 668 (3d Dep't 1994); *see also United States v. Tangorra*, 542 F. Supp. 2d 233, 236 (E.D.N.Y. 2008) (“documents submitted to a court in connection with a motion are within the presumption of access.”) (citing *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 124 (2d Cir. 2006)). Indeed, the presumption of access to court records “is ‘especially strong’ for ‘any item entered into evidence at a public session of the trial.’” *Danco*, 274 A.D.2d at 7, 711 N.Y.S.2d at 424 (citation omitted).

Here, there has been no public ruling whatsoever that the records at issue should be sealed. As a result, ABC is unaware of any “compelling circumstances” supporting denial of access here. The importance of this case – involving allegations made against one of the most powerful men in Hollywood, allegations that spawned the #metoo movement – to the American public cannot be overstated. Indeed, to the hundreds of thousands of women who feel vindicated by the People’s decision to prosecute Mr. Weinstein and stand up to the “conspiracy of silence” that protects powerful men who engaged in the kind of conduct Mr. Weinstein is alleged to have engaged in, there is no more important criminal case pending in America. And to the extent there are allegations that the District Attorney’s office has somehow miscarried in handling such a case, that too is significant.

In the face of this overwhelming public interest, it is hard to imagine a competing interest that would justify sealing the requested documents. To the extent the defendant contends that his right to a fair and impartial trial would be jeopardized by granting ABC’s request, there has been no on-the-record judicial finding that any prejudice whatsoever is possible, let alone reasonably likely. *See Burton*, 189 A.D.2d at 536. Alternatively, to the extent that the privacy interest of the complainants is the basis for sealing, those privacy interests cannot form a sufficient basis to deny the press and the public access, particularly where, as here, the identity of one of the complainants at issue has been publicly disclosed.² *See, e.g., Mosallem v. Berenson*, 76 A.D.3d 345, 351 (1st Dep’t 2010) (“[N]either the potential for embarrassment or damage to reputation, nor the general desire for privacy, constitutes good cause to seal court records.”) (emphasis added). Similarly, the fact that the allegations in this case are of an intimate and sexual nature is not, without more, grounds to seal the transcript or documents at issue. *See, e.g., Routh v. Univ. of Rochester*, 981 F. Supp. 2d 184, 216 (W.D.N.Y. 2013) (denying motion to seal court documents containing “graphic sexual details” pertaining to one of the parties); *Anonymous v. Anonymous*, 263 A.D.2d 341, 345 (1st Dep’t 2000) (reversing lower court’s sealing of courtroom on the ground that “there is nothing but a prurient interest in this case”). *See also Burton*, 189 A.D.2d at 535 (refusing to construe Civil Rights Law § 50-b to “flatly mandate[] denial of public access to court documents in all sex offense cases” because it “would raise serious constitutional questions under the First Amendment”). And, indeed, many of those concerns can be mitigated by the more narrowly tailored alternative of redaction, rather than wholesale sealing.

² *See supra*.

October 12, 2018

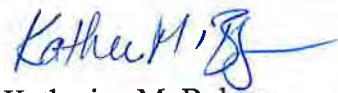
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Finally, the law is clear that courts are required to provide the press with notice and an opportunity to be heard before they take the drastic step of sealing court proceedings or records. *See Wiley*, 126 A.D.3d at 515, 6 N.Y.S.3d at 24 (courts “must adhere strictly to the procedures set forth in the controlling case law including affording a full opportunity by any interested members of the press to be heard, and making specific findings to support its determination”). *See also Associated Press v. Owens*, 160 A.D.2d 902-3 (2d Dep’t 1990) (reiterating that courts “must adhere” to procedural safeguards before closing proceedings and concluding that trial court judge “utterly disregarded his obligation to give interested members of the news media the opportunity to be heard on the issue of closure”); *Matter of Capital Newspapers Div. of Hearst Corp. v. Moynihan*, 125 A.D.2d 34, 38 (3d Dep’t 1987) (“affected members of the media should be given the opportunity to be heard”), *aff’d on other grounds*, 71 N.Y.2d 263 (1988).

Accordingly, because the public’s right of access attaches to the court proceedings and evidence in this case, and because no proper basis has been established to overcome this right, ABC requests copies of the motion to dismiss briefing and any exhibits thereto, and documents referenced in the September 12 letter. ABC also requests that at all filings in this action be listed on the public docket. Finally, to the extent the Court intends to deny the relief sought herein, we request the opportunity to be heard on this matter at the Court’s earliest convenience.

Respectfully submitted,

Davis Wright Tremaine LLP



Katherine M. Bolger

cc: Counsel for all parties (by e-mail)

EXHIBIT F

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 99

----- X

The People of the State of New York :

- against - : Decision and Order

Harvey Weinstein, :
----- Ind. No. 2335/18

Defendant. :
----- X

James M. Burke, J.:

The Court is in receipt of the motions of the defendant and the People regarding Molineux/Sandoval evidence in the above-titled action. This Court will be conducting a Molineux/Sandoval hearing regarding the admissibility of evidence.

Specifically, at the Molineux component of the hearing, the Court will determine whether to allow certain evidence on the People's direct case. At the Sandoval component of the hearing, the Court will determine, should the defendant testify at trial, whether to allow the People to use certain evidence for the purpose of impeaching the defendant's credibility. On application of both sides, the Court has conditionally sealed the submissions of the defendant and the People. Prior to the Molineux/Sandoval hearing, the Court will conduct a preliminary hearing on the issue of whether the courtroom should be closed, as well as on the sealing of the attendant written submissions, and will render a decision. See People v Arthur, 178 Misc2d 419 (Sup Ct NY Co 1998).

In their Molineux application, the People seek to introduce evidence of uncharged crimes and bad acts purportedly committed by the defendant on their direct case. In their Sandoval application, should the defendant testify, the People seek to use bad acts and uncharged crimes purportedly committed by the defendant, submitting that this evidence bears on the defendant's credibility. The defendant opposes the People's Molineux and Sandoval applications and specifically opposes the introduction or use of uncharged crimes and bad acts for any purpose.

As such, the Court has determined that prior to the Molineux/Sandoval hearing, this Court will conduct a preliminary hearing regarding whether the substantive arguments regarding the admissibility of this evidence will be conducted in an open or closed courtroom.

To that end, the Court has received written submissions from the People and the defendant regarding their positions as to the basis of closure of the courtroom during the substantive arguments.

The press has also been notified and is being given an opportunity to state their position in writing, and also whether the conditionally sealed motion papers and record should be unsealed. All of the submissions regarding this preliminary issue will be placed in the public court file.

At the preliminary hearing and in open court, the People and the defendant

will be permitted to present legal arguments as to whether the courtroom will be open or closed during the substantive portion of hearing on the admissibility of this evidence, and the press and public will also be allowed to present their position. The Court will also hear all parties' positions on the sealing of the concomitant records and submissions. At the conclusion of this preliminary hearing, the Court will render a decision regarding closure and sealing.

This shall constitute the Decision and Order of this Court.

New York New York

April 17, 2019

James M. Burke, A.J.S.C.

HON. JAMES M. BURKE

PT. 99 APR 17 2019

EXHIBIT G

DISTRICT ATTORNEY
COUNTY OF NEW YORK
ONE HOGAN PLACE
New York, N.Y. 10013
(212) 335-9000



CYRUS R. VANCE, JR.
DISTRICT ATTORNEY

PT. 99 (APR 16 2019)

April 16, 2019

PT. 99 APR 16 2019

Honorable James Burke
Supreme Court of the State of New York
Part 99
100 Centre Street
New York, NY 10013

Re: People v. Harvey Weinstein
Ind. No. 2335/2018

Dear Judge Burke:

This letter is in response to the Court's communication of April 11, 2019, seeking the position of the parties on closure of the courtroom during the *Sandoral* and *Molineux* hearings to be conducted on April 26, 2019. The People seek an order of this Court, closing the courtroom to the public and the press during these hearings.¹ In response to the specific questions posed by the Court, this letter provides (1) the reasons for closure, (2) the legal basis therefor, and (3) the procedures required prior to excluding the public and press.

As this Court is well aware, this case has generated extensive media coverage and will continue to do so in light of the celebrity status of the defendant and others in the entertainment field who have had dealings with him. The public's appetite for information relating to the defendant shows no sign of abating. To strike the proper balance in this case between the public's and press's qualified right to attend court proceedings and the defendant's right to a fair trial by an impartial jury, the Court should—after hearing in open court from the parties and representatives of the media, and making specific findings on the record—order that the *Sandoral* and *Molineux* hearings be closed to the public and the press. However, the Court should make clear that any evidence that it determines is admissible will be made public at the trial of this matter, or earlier if disclosure will not compromise the defendant's right to a fair trial.

The First Amendment guarantees the public and the press a qualified right of access to criminal trials. *Richmond Newspapers v. Virginia*, 448 U.S. 555, 580 (1980) (plurality opinion). Although the public acquires information about trials primarily from the press, “the press is not imbued with any special right of access,” but rather possesses “the same right of access as the public.” *Courtroom Television Network LLC v. State of New York*, 5 N.Y.3d 222, 229 (2005) (quoting *Richmond Newspapers*, at 573). “Thus, the press has ‘no right to information about a

¹ We believe that the defense is also moving for closure of these proceedings.

trial superior to that of the general public.” *Id.* at 229 (quoting *Nixon v. Warner Communications, Inc.*, 432 U.S. 589, 609 (1978)). In addition to trials, other court proceedings, such as pretrial hearings, are presumptively open to the public and the press. E.g., *Matter of Associated Press v. Bell*, 70 N.Y.2d 32, 38 (1987) (Hunley hearings); *Matter of Westchester Rockland Newspapers v. Leggett*, 48 N.Y.2d 430, 440 (1979) (competency hearings); *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 10 (1986) (*Press-Enterprise II*) (preliminary hearings); *Gannett Co., Inc. v. DePasquale*, 43 N.Y.2d 370, 380-81 (1977), *aff’d*, 443 U.S. 368 (1979) (suppression hearings).

However, the right of the public and the press to attend court proceedings is not absolute and the trial court “has an affirmative constitutional duty to minimize the effects of prejudicial pretrial publicity” by taking measures that preserve a defendant’s right to a fair trial. *Matter of Westchester Rockland Newspapers v. Leggett*, 48 N.Y.2d at 438 (quoting *Gannett*, 443 U.S. at 378). “The public’s right of access may be limited where there is a compelling governmental interest and closure is narrowly tailored to serve that interest.” *Matter of Daily News, L.P. v. Wiley*, 126 A.D.3d 511, 512 (1st Dept. 2015) (citing *Press-Enterprise Co. v. Superior Court*, 464 U.S. 501, 510 (1984) (*Press-Enterprise I*)).² Accordingly, where a defendant seeks to exclude the public from a pretrial proceeding, he must move for relief, on the record in open court, and show “a strong likelihood” that specific evidence would prejudice his right to a fair trial if disclosed. *Matter of Daily News, L.P. v. Wiley*, 126 A.D.3d at 513; *Matter of Associated Press v. Bell*, 70 N.Y.2d at 39 (defendant bears burden of showing that his right to fair trial may be compromised by an open proceeding). Moreover, the trial court must make “specific findings” that closure will prevent “a substantial probability” that the defendant’s right to a fair trial will be prejudiced by publicity and that “there are no reasonable alternatives to closure to protect the defendant’s fair trial rights.” *Matter of Daily News, L.P. v. Wiley*, 126 A.D.3d at 513 (citing *Matter of Associated Press v. Bell*, 70 N.Y.2d at 39 and *Press-Enterprise II*, 478 U.S. at 13-14).

In *People v. Arthur*, 178 Misc.2d 419 (Sup. Ct., N.Y. Co. 1998) (Kahn, J.), a case that “generated intense media scrutiny and an enormous amount of pretrial publicity all over the world,” the trial court granted the motion of the People, joined by the defendant, to seal the moving papers, responses, and the court’s decision on the People’s application to introduce evidence of uncharged crimes or bad acts allegedly committed by the defendant, pursuant to *Molineux* and *Sandorul*. *Id.* at 420, 423. The court concluded that until such time as the evidence was determined to be admissible, either because the defendant chose to testify (*Sandorul*), or the court determined that probative value outweighed prejudice (*Molineux*), the publication of the evidence “would serve no purpose other than to arouse negative public sentiment toward the defendant and would have a devastating effect on defendant’s ability to select an impartial jury.” *Id.* at 425. The court further held that any measure short of sealing the documents, including “the most probing *voir dire* followed by the clearest jury instruction, could not

² Likewise, decisions to seal or disclose records fall within the court’s inherent power to control the records of its own proceedings. *Matter of Daily News, L.P. v. Wiley*, 126 A.D.3d at 512 (citing *Matter of Crain Communications v. Hughes*, 74 N.Y.2d 626, 628 (1989) (holding that mandamus did not lie because decision to initially seal or to later disclose court records involved balancing of competing interests through exercise of judicial discretion)).

effectively eliminate the prejudicial impact on the jury of the publication of defendant's alleged uncharged bad acts in this case." *Id.* *Accord People v. Arroyo*, 177 Misc.2d 106, 112 (Schoharie County Ct. 1998) (denying motion to close courtroom during suppression hearing, but granting motion to seal *Sandoval* motion on ground that if defendant chose not to testify, "the prosecution is totally precluded from using the information").³

This reasoning is fully applicable here and should result in (1) continuing the sealed status of the parties' *Molineux* and *Sandoval* motions and responses and (2) closing the April 26 hearing on the admissibility of this evidence. Moreover, in this case, another pertinent consideration is the privacy of those potential witnesses who have been victims of sexual assault and whose identity is protected by law. *See Civil Rights Law § 50-b(1); People v. Hodges*, 172 Misc.2d 112, 116 (Sup. Ct., Kings Cty. 1997). If the Court precludes such witnesses from testifying at trial, their identities should remain protected from public disclosure.

Accordingly, pursuant to the authorities cited above, we respectfully submit that the Court, after giving any representatives of the press who so request an opportunity to be heard, make a finding, on the record and in open court, that closure of the courtroom for a determination of the *Sandoval* and *Molineux* motions is necessary to "prevent a substantial probability that the defendant's right to a fair trial would be prejudiced by publicity and that there are no reasonable alternatives to closure to protect the defendant's fair trial rights." *Matter of Daily News, L.P. v. Wiley*, 126 A.D.3d at 513. *See Matter of Capital Newspapers Div. of Hearst Corp. v. Chyne*, 56 N.Y.2d 870, 872-73 (1982) (holding that trial court erred in not conducting preliminary inquiry before deciding to exclude newspaper reporter from midtrial *Sandoval* hearing) (citing *Matter of Westchester Rockland Newspapers v. Leggett*, 48 N.Y.2d at 442 (holding that motion to exclude press and public from hearing must be made on the record in open court and all proceedings on the motion must be recorded for appellate review)).⁴

³ The court in *Arthur* aptly noted that the proffered evidence (pursuant to *Sandoval* and *Molineux*) was different in kind than that at issue in a suppression hearing where the public has a legitimate interest in challenges to the conduct of police and prosecutors, i.e., in seizing evidence or interrogating suspects. 178 Misc.2d at 422. *See also Matter of Associated Press v. Bell*, 70 N.Y.2d at 38 (noting that the "need for an open proceeding may be particularly strong with respect to suppression hearings") (quoting *Waller v. Georgia*, 467 U.S. 39, 47 (1984)). Such considerations are not present when deciding whether closure is proper in a *Sandoval* or *Molineux* hearing.

⁴ In *Matter of Westchester Rockland Newspapers v. Leggett*, 48 N.Y.2d at 442, the Court of Appeals noted that, if in the course of the argument on the closure motion that is conducted in open court, it becomes necessary for counsel to discuss certain items of evidence, the disclosure of which "would create the very prejudice sought to be avoided," counsel can request that such portion of the argument be continued *in camera*, in the presence of opposing counsel but out of the hearing of the public.

As stated above, the Court's order should make clear that any evidence it determines is admissible under *Molinexx*, and under *Sandorai* should the defendant choose to testify, will be disclosed at trial, or earlier if disclosure will not compromise the defendant's right to a fair trial.

Respectfully submitted,



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cc: Jose A. Baez, Esq.

EXHIBIT H

PL 99 APR 16 2018

FAX APR 16 2018

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April 16, 2019

People v. Weinstein. Indictment No. 2335/2018

Via Email

Honorable James Burke
New York Supreme Court, Criminal Term
New York, New York

Dear Judge Burke:

Defendant Harvey Weinstein, by and through counsel, respectfully requests that the pretrial hearings regarding the *Sandoval* and *Molineux* motions pending before this Court, set to be heard on April 26, 2019, be closed to the public and the press. There are legally sufficient compelling reasons, as described below, for the Court to exercise its discretion to close the proceedings.

The presumption that trials be open to the public and that every citizen (and, by extension, the press) should be able to attend is well settled. This presumption sounds in the Constitution, US Const 1st, 6th, 14th Amends, as well as under state statutory, Civil Rights Law § 12, and case law, *People v Hinton*, 31 NY2d 71, 73 (1972); *People v Jetke*, 308 NY 56, 61 (1954). It is equally well settled, however, that the right to a public trial is not an "absolute right." *Gannett Co. v De Pasquale*, 43 NY2d 370, 377 (1977). Rather, when there is an overriding interest in protecting Sixth Amendment values, New York courts have made clear that

the “the public trial concept has . . . ‘never been viewed as imposing a rigid, inflexible straightjacket on the courts. It has uniformly been held to be subject to the inherent power of the court . . . to protect the rights of parties and witnesses[] and generally to further the administration of justice.’” *Id.* (citing *People v Jelke, supra*, at 63). Furthermore, New York statutory law expressly affirms the right of the Court, at its discretion, to close the courtroom for cases regarding, *inter alia*, rape, assault with intent to commit rape, and criminal sexual acts, provided that the reasons for closure are given in open court. Judiciary Law § 4; *Westchester Rockland Newspapers, Inc. v Leggett*, 48 NY2d 430, 442 (1979); *United Press Ass’ns v Valente*, 120 NYS2d 642 (Sup Ct, New York County 1953) (trial court may close proceedings even as to sexual crimes not expressly named in § 4); *See also People v Jones*, 82 AD2d 674 (2d Dept 1981); *People v Robertis*, 151 AD2d 1028 (4th Dept 1989).

The Court may clearly and appropriately exercise its discretion to exclude the public and the press from the courtroom during the *Sandoval* and *Molineux* pretrial hearings scheduled for April 26th. In “a highly publicized case,” this Court has the “inherent power” to close the proceeding in order to protect Mr. Weinstein’s “right to a fair trial.” *Westchester Rockland Newspapers, Inc. v Leggett, supra* at 439. These motions concern alleged, uncharged, and unproven misconduct that may ultimately never be allowed in evidence. To expose prospective jurors to such material will prejudice both Mr. Weinstein’s and the People’s right to a fair trial and an impartial jury. In *Daily News, L.P. v Teresi*, the Appellate Division affirmed the lower court’s decision to seal all documents relating to a *Sandoval* motion, finding that the release of such materials “would have generated considerable media attention on irrelevant and prejudicial information at a crucial time, i.e., when jury selection was imminent and the impact on the . . . jury pool[] would be at its greatest.” *Teresi*, 265 AD2d 129, 133 (3rd Dept 2000).

Pretrial proceedings, such as *Sandoval* and *Molineux* hearings, are “often a potent source for the revelation of evidence which is both highly prejudicial to the defendant’s case and not properly admissible at trial.” *Westchester Rockland Newspapers, Inc. v Leggett, supra* at 439. Such is the case here. The People’s *Sandoval* motion seeks to introduce instances of uncharged, unproven accusations that have absolutely no bearing on the facts of the charges faced by Mr. Weinstein. Similarly, its *Molineux* motion contains allegations that the People likely will seek to adduce as an alleged pattern of criminal behavior in the minds of jurors rather than establish necessary elements of the current case. Both motions rely heavily on prejudicial descriptions of alleged behavior having dubious probative value. As important, any arguable probative value is outweighed by the undue prejudice associated with public disclosure of such unproved and uncharged allegations that will reach the jury pool in the instant matter.

Significantly, the Court has already engaged in the afore-described balancing of interests when it entered its original order to seal certain material in this case. In this sense, the Court has correctly recognized the potential injury to Mr. Weinstein’s and the People’s right to a fair trial unburdened by the form and substance of pre-trial and extra-judicial commentary that inevitably would result from an open *Sandoval* and *Molineux* hearing. The Court’s analysis then retains the

same force as it does today. To hold an open hearing on this topic will inject prejudice into this matter than can be avoided by recognizing the compelling interest in ensuring a fair trial.

Should the *Sandoval* and *Molineux* pretrial hearings be held publicly, prospective jurors will be exposed to potentially irrelevant and unquestionably prejudicial information that will impede Mr. Weinstein's ability to receive a fair trial, particularly in the sensationalized media environment surrounding these proceedings. Indeed, the media frenzy surrounding Mr. Weinstein is a textbook example of the "exceptional and compelling circumstances" that justify the exclusion of the public and the press. *Poughkeepsie Newspapers, Inc. v Rosenblatt*, 92 AD2d 232, 234 (2d Dept 1983). As the *Leggett* Court explained, "in a well-publicized case, it is most likely that the substance of the evidence would be disclosed to the community from which the jurors would be drawn, even though the court might ultimately rule that the evidence should not be submitted to the jury at trial, and this would not only destroy the purpose for which the hearing was held, but would, perversely, have the very opposite effect of that intended and desired." *Westchester Rockland Newspapers, Inc v Leggett, supra* at 439. In such a situation, when it would otherwise be virtually impossible to find jurors unexposed to such proposed evidence of a prejudicial nature, it is proper for the Court to close the proceedings. *Gannett Co. v Falvey*, 181 AD2d 1038 (4th Dept 1992). This problem is particularly acute here in that the two hearings at issue will occur very close in time to the trial. The prejudicial impact of the unproven and uncharged alleged conduct will not abate in the minds of prospective jurors. The exposure will be fresh, and the impact will be palpable.

While the Court must honor the rights of the press and the public under constitutional and New York law, in occasions such as this one it may consider reasonable alternatives to an open hearing that are "consonant with constitutional free press guarantees..." *Gannett Co. v De Pasquale, supra* at 381). Accordingly, and for the foregoing reasons, the Defense requests that the pretrial *Sandoval* and *Molineux* hearings, set for April 26, 2019, be closed to the public and the press.

Sincerely,



Ronald S. Sullivan Jr., Esq.